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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, 22nd June 1955

S.R.O. 1430.—Whereas the election of Shri Karan Singh, S/o Shri Jaskaran Singh of Jhandi, Tahsil Nighasan and Shri Jagannath Prasad, S/O Shri Bandi Prasad of Village Dhourahra, Tahsil Nighasan, as members of the Legislative Assembly of the State of Uttar Pradesh, from the Nighasan-cum-Lakhimpur (North) constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Khushwaqt Rai, S/o Shri Babu Sheo Baksh Rai of Lakhimpur Kheri;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUCKNOW.

PRESENT

Sri Raghunandan Saran, (Retired District Judge),—*Chairman.*

Sri A. Sanyal,—*Advocate Member.*

Sri M. U. Faruqi, (Retired District Judge),—*Judicial Member.*

ELECTION PETITION No. 319 OF 1952.

*Petition under Sections 80 and 81 of the Representation of the People Act, 1951. (Nighasan-cum-Lakhimpur (North) Constituency of the Uttar Pradesh Legislative Assembly).*

Sri Khushwaqt Rai, son of Babu Sheo Baksh Rai, resident of Lakhimpur Kheri.—*Petitioner.*

*Versus*

1. Shri Karan Singh, son of Shri Jaskaran Singh resident of Jhandi, Tehsil Nighasan, Distt. Kheri.
2. Shri Jagannath Prasad, son of Shri Bandi Prasad, resident of Village Dhaurahra, Tehsil Nighasan, Distt. Kheri.
3. Shri Banshi Dhar Misra, son of Shri Beni Madho, resident of Civil Lines, Lakhimpur Kheri.

( 1455 )

4. Shri Gulab, son of Shri Lakhan, resident of village Chiknajeti, Tehsil Nighasan, Distt. Kheri.
5. Shri Raghunandan Prasad Indra son of Shri Dwarka Prasad, Advocate resident of Lakhimpur Kheri.
6. Shri Shyam Lal, son of Shri Chaturi, resident of village Raheti, Tehsil Nighasan, Distt. Kheri.
7. Shri Devta Din, son of Shri Pandit Ram Ratan Tewari, resident of Brijapurwa, hamlet of Nighasan, Tehsil Nighasan Distt. Kheri.
8. Shri Surath Bahadur Shah, son of Shri Rai Bahadur Lalla Ram Bahadur Shah, resident of Radiche Road, Lucknow.
9. Shri Jagdamba Prasad, son of Shri Shyam Narain, resident of Jatpurwa, Tehsil Nighasan, Distt. Kheri.
10. Shri Ram Dayal, (Father's name not known) resident of Chunsi, Tehsil Lakhimpur, Distt. Kheri.
11. Shri Sharda Prasad, son of Shri Gangadin, resident of Pallia Kalan, Tehsil Nighasan, Distt. Kheri.
12. Shri Kalluwal, son of Shri Ratan Chaudhari, resident of Pallia Kalan, Tehsil Nighasan, Distt. Kheri.
13. Shri Mata Prasad, son of Kalka Prasad, resident of Kaffara, Tehsil Nighasan, Distt. Kheri.—Respondents.

## JUDGMENT

1. This is an election petition under Sections 80 and 81 of the Representation of the People Act, 1951 challenging the election to the Uttar Pradesh Legislative Assembly from the Nighasan-cum-Lakhimpur (North) Constituency of the Lakhimpur District. This is a two-member constituency, one of the two seats being reserved for the Scheduled Castes candidates. The date of polling was 22-1-52 and as a result of the counting of votes the respondents No. 1 and 2, Shri Karan Singh and Shri Jagannath Prasad, were declared elected. These respondents stood on the Congress ticket and the respondent No. 2 Sri Jagannath Prasad is of the Scheduled Castes. The petitioner is Sri Khushwaqt Rai also known as Kunwar Sahib and Bhaiya Lal, who himself stood for the general seat as an independent candidate and his election symbol was the cycle. The respondents No. 3 to 13 were the other candidates in this election but the nomination of the respondent No. 5 was rejected while the respondents No. 3, 7, 8 and 10 to 13 withdrew within the prescribed period, so that the contest was between the petitioner and the respondents No. 1, 2, 4, 6, and 9 only. The election petition was presented on 9-6-52 challenging the election of the respondents No. 1 and 2 on the ground of several corrupt practices and irregularities set forth in paras No. 7 and 8 of the petition, and the prayer is that the election of the respondents No. 1 and 2 be declared to be void and the petitioner and the respondent No. 4 declared to have been duly elected. It is alleged also that under Section 7(d) of the Representation of the People Act, 1951, the respondent No. 1 was disqualified for seeking election, and the election of the respondents No. 1 and 2 is sought to be avoided on this ground as well. The number of votes secured by the several contestants in this election was as follows:—

Sri Karan Singh respondent No. 1	19,630
Sri Jagannath Prasad respondent No. 2	19,571
Sri Khushwaqt Rai petitioner	16,705
Sri Gulab respondent No. 4	15,694
Shri Jagdamba Prasad respondent No. 9	4,256
Shri Shyam Lal respondent No. 6	2,324

2. The respondents No. 1 and 2 filed separate written statements controverting the allegations of disqualification, corrupt practices and irregularities and contending that there was no disqualification and that no corrupt practice or irregularities had been committed and that the election was, therefore, not liable to be set aside, but neither of them has made any recrimination, whether against the petitioner or the respondent No. 4 in accordance with the provisions of Section 97 of the Representation of the People Act. The respondents No. 1 and 2 contended also that the election petition had not been properly framed and was, therefore, liable to be rejected for non-compliance with the provisions of Section 83(8) of the Representation of the People Act, 1951, that some of its allegations were vague and indefinite, and that Sri Ram Dayal, one of the duly nominated candidates, had been left out from the petition and a different person of the same name had been wrongly impleaded as the respondent No. 10.

3. On the pleadings of the petitioner and the respondents No. 1 and 2 nine issues were framed out of which issue No. 1 was about the petition being not properly framed, issue No. 2 was about the allegations of the petition being vague and indefinite and issue No. 3 was about the non-joinder of Sri Ram Dayal. The case was first heard as regards these three preliminary issue No. 1, 2 and 3 and they were disposed of by the order of the Tribunal dated 21-3-53 which is appended to this order as Annexure A; the petition was not found liable to dismissal under Section 93(S) or for any non-joinder of Sri Ram Dayal, but some portions of the petition were found to be vague and indefinite and were, therefore, ordered to be deleted.

4. The respondents No. 1 and 2 contended still that in respect of some of the alleged corrupt practices the necessary particulars were wanting and under the Tribunal's order the petitioner supplied these particulars on 16-9-53. Thereafter on 4-12-53 the petitioner applied for amendment of his election petition by the addition of an allegation that for the furtherance of the prospects of his election the respondent No. 1 procured the assistance of three village headmen Baij Nath, Kenhai Lal and Tulsi Ram by appointing them as his polling agents. This application for amendment was vehemently opposed by the respondent No. 1, but it was ultimately allowed by the Tribunal on 13-1-54 and that order dated 13-1-54 is appended to this order as Annexure B; the Advocate Member and the Chairman were for allowing the amendment while the Judicial Member dissented, and the opinion of the majority prevailed in accordance with the provisions of Section 104 of the Representation of the People Act, 1951. From the order of the Tribunal dated 13-1-54 the respondent No. 1 went up to the Hon'ble High Court by means of a writ petition but was unsuccessful there also. The respondent No. 1 controverts the allegation about his procuring the assistance of these village headmen for the furtherance of the prospects of his election.

5. The issues that now remain for determination in this case are the following issues No. 3 to 7 and 9:—

- (3) (a) Was the respondent No. 1 disqualified from seeking election under Section 7(d) of the Representation of the People Act, 1951?
- (b) Can the petitioner get the election of the respondent No. 1 and 2 declared void on that ground?
- (4) Are the allegations of corrupt and illegal practices true in substance? If so, what is the effect thereof?
- (5) Was the election vitiated by all or any of the irregularities alleged in the petition? Has the results of the election been materially affected thereby?
- (6) Whether the returns of election expenses filed by the respondents were false in any material particulars? If so, what is the effect thereof? Whether these returns did not comply with the requirements of Law?
- (7) Did the Congress organisation incur any expenditure in furtherance of the election of respondents No. 1 and 2? Was the expenditure incurred to their knowledge or with their connivance? Was such expense required to be included in the returns of election expenses of respondents No. 1 and 2? What, if any, is the result of such omission?
- (9) Is the petitioner entitled to any of the reliefs claimed by him?

6. The grounds of which the election of the respondents No. 1 and 2 is sought to be avoided are mentioned in paras 7 and 8 of the petition; para 7 is divided into 17 sub-paragraphs numbered as (i) to (xvii); sub-paragraph 7(i) contains the allegation about the disqualification of the respondent No. 1 under Section 7(d) of the Representation of the People Act, 1951, while sub-paragraphs (ii) to (xv) contain allegations of corrupt practices and sub-paragraphs (xvi) and (xvii) contain allegations of irregularities; para 8 is about the returns of the election expenses of the respondents No. 1 and 2 being false in material particulars. No illegal practice has been alleged. In support of this case the petitioner has examined 144 witnesses including himself and has proved 167 documents. The respondents have examined 87 witnesses including themselves and have proved 39 documents. We proceed to determine the issues No. 3 to 7 and 9.

7. *Issue No. 4:*—The first corrupt practice alleged is that of bribery as defined in Section 163(1) of the Act and the allegations about this corrupt practice are

contained in para 7(ii) of the petition sub-divided into head (a) to (f); however, the instances given in heads (a), (b) and (d) to (f) have been deleted by the order of the Tribunal dated 21-3-53 and we are, therefore, left with the head (c) only which contains two instances of bribery and says that the respondents No. 1 and 8 paid a sum of Rs. 100 to each of the electors No. 797 (Ambika Prasad) and No. 936 (Khotan Lal) of village Banbirpur on or about 15-1-52 to enlist their support and secure their votes. At the time of the trial the case of Ambika Prasad also was given up and only that of Khotan Lal was pressed. The petitioner's case in respect of Khotan Lal is that in the beginning this Khotan Lal was the Petitioner's worker in the election but on or about 15-1-52 the respondent No. 1 bribed him by giving him a sum of Rs. 100 and so he gave up working for the petitioner and started working for the respondents No. 1 and 8. There is no direct evidence of the payment of this gratification and the reliance of the petitioner is only upon a letter Ex. P 49; this letter is dated 12th January 1952 and according to the common case of the parties it is in the handwriting of Khotan Lal; it is addressed to Suraj Prasad of Lalapur P.W. 193 and says that Karan Singh Ji has given the writer (Khotan Lal) a sum of Rs. 100/- in connection with the election and has promised to pay more money after his success and it contains a suggestion that Suraj Prasad also should take advantage of the situation and should work for Sri Karan Singh and the Congress. Suraj Prasad P.W. 103 says that this letter was delivered to him by a private messenger Chatrapal P.W. 104 in the presence of Sankata Prasad P.W. 105 some 4 or 5 days before the polling day which was 22nd January 1953, and Chhatrapal and Sankata Prasad support him on this point; Suraj Prasad adds that on the following day Khotan Lal met him in a village market and told him verbally also about his having got the illegal gratification and pressed him to agree to his suggestion; of course Suraj Prasad refused to accept any such suggestion and went on working for the petitioner in the election as before. Sankata Prasad P.W. 195 also was a worker of the petitioner in the election. Chatrapal P.W. 194 says that Khotan Lal worked for the petitioner in the election for a long time after which he changed sides, but according to him the changing of sides was some 4 or 5 days after the delivery of the letter to Suraj Prasad, which is not in conformity with the petitioner's case. Bansi Lal, Kewal Ram, Rampal and the petitioner himself, P.W.'s as 106 to 108 and P.W. 141, also in case about Khotan Lal having changed sides in the election days.

8. The case of the respondents is that Khotan Lal was never given any gratification by them, that he was their worker in the election from the very beginning and never changed sides, and that it was only after the election that the petitioner won him over and persuaded him to write the letter Ex. P. 40 for the purpose of this election petition; and their witnesses on this subject are R.W. 89 Ambika Prasad himself named in the petition as one of the persons bribed by the respondents, R.W. 32 Satya Vrat, R.W. 43 Bhagwati Prasad Misra, R.W. 70 Sri Jagannath Prasad respondent No. 8 and R.W. 38 Sri Karan Singh respondent No. 1. Khotan Lal himself has not been examined by any party and each party says that he is under the influence of the other party. Banbirpur and Lalapur are neighbouring villages with a common panchayati Adalat and there are party factions in these villages and the witnesses of the petitioner and of the respondents cannot be relied upon as they belong to one party or the other. There is no direct evidence of the alleged payment of this illegal gratification; nor is there any certainty that the letter Ex. P 40 was written in the election days and not consequently; had this letter been sent by post the date-stamp on it would have fixed the date of the letter, but unfortunately it is said to have been delivered through a private messenger only and in these circumstances we are not quite satisfied about Khotan Lal having been bribed by the respondent No. 1. In fact there is one circumstance which is positively against Khotan Lal having been bribed and won over by the respondent No. 1 about a week before the polling and it is that a leaflet Ex. P 36 was issued for the respondents No. 1 and 8 in this election over several names including that of this Khotan Lal and the petitioner admits that he came across a copy of this leaflet some four weeks before the polling which would mean that this Khotan Lal was working for the respondents even four weeks before the polling and so there was no question of his being bribed and won over by the respondent No. 1 about a week before the polling.

9. Next, there is the major corrupt practice of obtaining assistance from persons serving under the Government as defined in Section 123(8) and the allegations about it are in para 7(iii) of the petition sub-divided into heads (a) to (h) to which has also been added the head (i) about the Mukhiya or village headmen by the amendment of the petition. The first case is that of Sri Prem Shankar Shukla who was the Returning Officer in this election, and

about him it is alleged in para 7(iii) (a) that on the polling day he visited *inter alia* the Motipur polling station where he entered a polling compartment and collecting all the ballot papers lying outside on or near the ballot boxes put them into the ballot boxes of the Respondents No. 1 and 2, and the motive for his having done so is said to be that he was a relation of Pt. Bansidhar Misra, a very important person of the District and the chief organizer of the election of the respondents No. 1 and 2. The respondents No. 1 and 2 admit that Sri Shukla was a relation of Sri Misra but deny that Sri Shukla did any such thing at Motipur. The petitioner's only evidence on this point is the testimony of his witness No. 60 Avadh Behari Lal of Hardwahi who was his polling agent at Motipur polling station and who says that Sri Shukla did this thing in the polling compartment of booth No. 2; his witnesses No. 58 and 59 Deo Datt and Chandrika Prasad depose about Sri Shukla going into the other polling compartments but do not say that he did any such thing there. As against this evidence we have the testimony of R.W. 76 Sri Ranjit Singh who is the Principal of an Intermediate College and was the Presiding Officer at this polling station and who says that Sri Shukla did certainly visit the Motipur polling station on the polling day but did not enter any polling compartment at all and we see no good reason to believe Avadh Behari Lal in preference to Sri Ranjit Singh. Sri Shukla himself has not been examined by the respondents, but in view of the petitioner's meagre evidence it was hardly necessary to examine Sri Shukla. We find, therefore, that it has not been proved to our satisfaction that Sri Shukla did any act for the furtherance of the prospects of the election of the respondents No. 1 and 2.

10. In para 7(iii) (b) of the petition it is alleged that Sri R. K. Misra, a Sub-Dy. Inspector of Schools, was the Presiding Officer at Bijuwa polling station and he too picked up some ballot papers lying outside the ballot boxes at his polling station and put them into the ballot boxes of the respondents No. 1 and 2 in furtherance of the prospects of their election. On behalf of the respondents it is denied that Sri Misra Presiding Officer did any such thing at this polling station. The petitioner has examined four witnesses on this point, viz. Satish Chandra P.W. 4, Maiku Lal P.W. 5, Puttu Lal P.W. 6 and Ram Gopal P.W. 124 who say that they saw Sri Misra doing this thing at different hours; Satish Chandra and Ram Gopal were the petitioner's polling agents at this polling station while Maiku Lal and Puttu Lal were two of the electors; Satish Chandra, Maiku Lal and Puttu Lal saw Sri Misra doing this before the lunch interval and they gave information of it to Ram Gopal and when Ram Gopal himself saw Sri Misra doing the same thing after the lunch interval he presented a written complaint Ex. 41 to Sri Misra about it on which Sri Misra wrote out his note Ex. P41A; however, the grievance set forth in Ex. P 41 is somewhat different from the grievance sought to be made out now inasmuch as in Ex. P 41 the allegation is that the ballot papers in question were lying on a ballot box itself and not outside the ballot box and that Sri Misra put them into some ballot box and not into the ballot boxes of the respondents No. 1 and 2; Sri Misra's note Ex. P 41A thereon is that these ballot papers were put into that very ballot box from which they had been hanging out. The respondents have examined two witnesses Babu Ram Pathak R.W. 55 and Misri Lal R.W. 59 to say that Sri R. K. Misra did not go into any polling compartment at all that day and so there was no question at all of his doing any such thing and that at the end of the day the workers of the different candidates including Ram Gopal P.W. 124 thanked Sri Misra for the fair conduct of the polling; Babu Ram Pathak was an elector while Misri Lal claims to have been a polling agent of the respondent No. 1 although no polling agency form in respect of him is to be found. We are not much impressed by the testimony of Babu Ram Pathak and Misri Lal, but at the same time we do not believe the witnesses of the petitioner himself when they say that Sri Misra picked up any ballot papers lying outside the boxes and inserted into the boxes of the respondents No. 1 and 2 as all this is not borne out by the written complaint of Ram Gopal Ex. P 41. Sri Misra himself has not been examined by the respondents but we have his note Ex. P41A explaining the circumstances. On reading this note along with the complaint Ex. P41 we are not satisfied that the facts were not as set forth in Ex. P41A or that they were as stated by the petitioner's witnesses or that Sri Misra did any act in furtherance of the prospects of the election of the respondents No. 1 and 2.

11. Para 7(iii) (c) of the petition is in respect of Sri Yag Datt Awasthi who was those days the Panchayat Raj Inspector at Dhaurahra in this constituency. It is alleged about him that on 20th January 1952 he canvassed support for the Congress candidates at village Abhaipur and on 21st January 1952 he did the

same thing at Ramia Behar market; he had been appointed to work as the Presiding Officer of the Taliyar polling station in this election but actually Sri Ram Pal Singh P.W. 126 worked as the Presiding Officer there and it is alleged that this change was made by the authorities in the evening of 21st January 1952 when they came to know of these activities of Sri Yag Datt. The respondents do not admit that Sri Yag Datt did any canvassing for them in the election and the parties have adduced evidence on this subject. In respect of Abhaipur the petitioner's evidence comprises of the testimony of four witnesses, Kaptan P.W. 83, Mahbub P.W. 84, Bindra P.W. 85 and Bal Govind P.W. 86 who are residents of Abhaipur and say that two days before the polling this official met them in the afternoon between the fields and the village abadi when they were returning after cutting the thatching straw and then he asked them to vote for the Congress in the election. As against this evidence the respondents have examined another resident of this village Ram Datt R.W. 81 who says that those days he too used to go out with Kaptan P.W. 83 to cut the straw but Yag Datt Awasthi never met them or canvassed them, and we are not satisfied that this official did any canvassing for the respondents No. 1 and 2 at Abhaipur. In respect of Ramia Behar the petitioner's evidence comprises of the testimony of Chhedi Lal P.W. 24, Brij Mohan Lal Verma P.W. 25, Ram Nath P.W. 27 and Baldeo Prasad P.W. 28; they all are residents of village Gusaha which is near village Ramia Behar and it appears that residents of Kusaha attend the weekly market held at Ramia Behar; 21st January 1952 was a market day at Ramia Behar and these witnesses say that they were in the Ramia Behar market that afternoon when a car came up there with Sri Yag Datt Awasthi, the respondent No. 1 and Sri Shri Ram Gupta *alias* Safeda R.W. 79, and then Sri Awasthi and Sri Gupta spoke on the loud speaker fitted to the car and asked the people present to vote for the Congress candidates on the following day which was the polling day. All these witnesses belong to the Kurmi community and appear to be related together and as against them the respondents have examined two residents of Ramia Behar, Dhiraj Singh R.W. 64 and Goley R.W. 66 who say that no such thing happened in the Ramia Behar market that afternoon and that it is altogether false that any car brought the respondent No. 1 or Sri Gupta or Sri Awasthi to Ramia Behar market that afternoon or that any of them did any propaganda there, the true fact being that none of these three persons was in the market that afternoon; Sri Shri Ram Gupta R.W. 79 and Sri Karan Singh respondent No. 1 R.W. 85 also say the same thing and in these circumstances we are not satisfied that Sri Awasthi canvassed for the respondents at Ramia Behar either.

12. Certainly Sri Awasthi was a paid clerk in the office of the District Congress Committee of Lakhimpur Kheri before he was appointed the Panchayat Raj Inspector in or about 1949, and also we have on the record a letter Ex. P75 dated 3rd February 1952 from the office of the District Congress Committee addressed to Sri Awasthi reminding him that certain forms of the Congress had remained with him for a long time and asking him to return them after getting them duly filled up by the public, but this would not mean that Sri Awasthi did any work for the Congress or the Congress candidates in the election. In February or March 1951 there was the District Political Conference at Dhaurara and Sri Awasthi attended it but many other officers and officials of the District also attended it, and the explanation for their attendance is that Sri A. G. Kher, then a Minister of U.P. was also present in this conference and these officers and officials were present in the conference out of courtesy for him and not because of any interest in the Congress or the politics. The suggestion on behalf of the petitioner that Sri Awasthi collected any subscription for this conference has been refuted by Sri Shri Ram Gupta R.W. 79 and Sri Jagannath Prasad respondent No. 2 R.W. 70. Originally Sri Awasthi was appointed as the Presiding Officer for the Taliyar polling station and Sri Ram Pal Singh P.W. 126 was appointed as a Polling Officer for the Ramia Behar polling station, but Sri Ram Pal Singh says that in the evening of 21st January 1952 the District Magistrate visited Ramia Behar and Sri Awasthi came to see the District Magistrate at that time and thereafter the District Magistrate ordered Sri Ram Pal Singh to proceed to Taliyar and work as the Presiding Officer there which Sri Ram Pal Singh did; the allegation on behalf of the petitioner is that the District Magistrate made this change because he had been informed about Sri Awasthi having canvassed for the respondents, but there is no evidence at all on behalf of the petitioner to show that anybody informed the District Magistrate of any canvassing by Sri Awasthi or that the District Magistrate had come to know of it otherwise or that the District Magistrate substituted Sri Ram Pal Singh for Sri Awasthi as the Presiding Officer of Taliyar for any such reason. The respondents have not examined Sri Awasthi as their witness but the petitioner either has not examined the District Magistrate and the whole thing remains shrouded in mystery and it may well be that Sri

Awasthi himself may have asked the District Magistrate to relieve him of the polling duties on any personal grounds such as his own indisposition or the illness of his wife or child etc. We find, therefore, that it has not been proved to our satisfaction that Sri Yag Datt Awasthi Panchayat Raj Inspector did any canvassing for the respondents Nos. 1 and 2 in the election.

13. In para. 7 (iii) (d) of the petition it is alleged that respondents No. 1 and 2 obtained the assistance of the seven patwaris and five Panchayat Raj Secretaries named therein, but at the time of arguments the petitioner's counsel has given up the case in respect of two of the patwaris viz., Yag Datt and Mohan Lal and two of the Secretaries viz., Suraj Prasad and Prakas Chandra and we are, therefore, left with five patwaris and three Secretaries. The first of these patwaris is Angney Lal R.W. 45 who is a resident of village Jhandi where the respondent No. 1 also resides. In the election days he was the patwari of village Bailaha and for some time he was also the Supervisor Kanoongo and the petitioner's evidence is that during the week immediately preceding the polling day he canvassed for the respondents No. 1 and 2 at villages Semra, Parua, Sujampur and Bairia and his witnesses on this point are P.W. 7 Paragi of Parua P.W. 8 Ram Chandra of Semra and P.W. 90 Mewa Lal of Parua. On behalf of the respondents the fact of any such canvassing is denied and their evidence comprises of the testimony of Angney Lal himself (R.W. 45) in addition to that of the respondents No. 1 and 2 themselves (R.W's. 85 and 70). This Angney Lal is of the Kahar community and his connection with village Parua is said to be that his sister is married there but Angney Lal denies that his sister is married at Parua. Ram Chandra P.W. 8 was the petitioner's worker and polling agent in the election and we do not believe him or Paragi or Mewa Lal when they say that Angney Lal did any canvassing for the respondents. This Angney Lal's son is Babu Ram who joined the respondent No. 1 in an application to the Deputy Commissioner in 1950 for allotment of some land under the U.P. Land Utilization Act, but it is in evidence that Babu Ram did not turn up to press his application and the land was, therefore, allotted to the respondent No. 1 and other applicants only who turned up; also the respondent No. 2 had been a Supervisor Kanoongo and the Naib Tahsildar in Tahsil Nighasan immediately before the election and he resigned from Government service for standing in the election, but we do not think that all this can be any ground for believing implicitly that Angney Lal Patwari assisted the respondents No. 1 and 2 in the election.

14. The next Patwari is Noor Mohammad R.W. 77 who is a resident of village Lakhai but has been a patwari at village Bairia for a long time and according to the petitioner's evidence he did canvassing for the respondents No. 1 and 2 at villages Lakhai and Bairia and at village Semra which is between Lakhai and Bairia. In the zamindari days village Lakhai belonged to the petitioner and it is alleged that because of certain circumstances Noor Mohammad became hostile to the petitioner and so he worked for the respondents No. 1 and 2 in the election; Noor Mohammad's step-brother is Ramzan Ali who himself was a patwari once and is said to be a favourite of the petitioner and there is great hostility between the two brothers and each is said to have a party of his own. In respect of Lakhai the petitioner's case is that some 20 days before the polling the respondent No. 1 came up to Lakhai in a car at 9 or 10 p.m. and canvassed the village people on a loud speaker and after him Noor Mohammad patwari spoke on the loud speaker in his support and that on other occasions also Noor Mohammad canvassed for the respondents No. 1 and 2 at Lakhai. The petitioner's witnesses on this point are P.W. 14 Abdul Ghani, P.W. 15 Abdul Aziz, P.W. 16 Ali Husain, P.W. 17 Rasul Bakhsh and P.W. 18 Gulam Mohammad who are all residents of Lakhai; but none of them appears to be independent or impartial; they belong to Ramzan Ali's party and are his relations and in the election in question they worked for the petitioner; Abdul Ghani P.W. 14 is this Ramzan Ali's son and was the petitioner's tenant in the zamindari days and the petitioner has made a patta or lease in the name of his cousin Rauf Ahmad. On behalf of the respondents the fact of Noor Mohammad having done any canvassing for them is denied and their witnesses of Lakhai are R.W. 27 Vishwanath Singh R.W. 28 Gauri Shankar and R.W. 30 Ram Bharosey in addition to Noor Mohammad himself (R.W. 77) and Sri Karan Singh respondent No. 1 (R.W. 85). The petitioner's witness about the canvassing at Semra is P.W. 8 Ram Chandra of Semra and his witnesses about the canvassing at Bairia are P.W. 88 Tirbhuvan Datt of Bairia, Sripal Dhobi of Bairia P.W. 89 and Ram Chandra of Semra P.W. 8, petitioner's worker and polling agent in the election, and as against their testimony we have that of Noor Mohammad himself who says that he did not work at all for the respondents. In these circumstances we are not satisfied that Noor Mohammad did any canvassing for the respondents No. 1 and 2 whether at Lakhai or Semra or Bairia.

15. Then we have Bankey Lal who is a resident of Baithia and in the election days he was the Patwari of Bhader. In the election petition he was wrongly named as Banwari Lal but the mistake was subsequently corrected by amendment. The case of the petitioner is that Mukand Ram, Darbari Lal and Roshan Lal of Allganj used to visit Bhader to canvass for the Congress and once about a week before the polling Bankey Lal patwari too joined them in the canvassing; also the polling station for Bhader was Tajpur where this Bankey Lal patwari was on official duty on the polling day and it is alleged that he then did some canvassing at the polling station also. The petitioner's witness on this subject are Lakhpat Singh P.W. 128, Ram Charan P.W. 129 and Ram Lal P.W. 130, all of village Bhader. On behalf of the respondents there is a denial and their witnesses on this point are Putan Singh of Bhader R.W. 56 and Mukand Ram himself of Allganj R.W. 72, who was a polling agent of the respondent No. 2 at the Tajpur polling station. Bankey Lal himself has not been examined by the respondents but from the evidence on the record we are not satisfied that Bankey Lal did any canvassing for the respondents, whether at Bhader or at the polling station.

16. Then there is Sheoraj Bahadur R.W. 87 who is a resident of village Birsinghpur and in the election days he was the patwari of village Belagarhi for which the polling station was Birsinghpur. The case of the petitioner is that some 15 days before the polling he did canvassing for the respondents No. 1 and 2 at Belagarhi and Birsinghpur and that on the polling day he canvassed for them at the polling station itself when he was on official duty whereas on behalf of the respondents there is an absolute denial of any such canvassing. The petitioner's witnesses on this point are Prag of Belagarhi P.W. 69, Sheocharan of Belagarhi P.W. 70, Surajpal of Birsinghpur P.W. 71, Kashi Ram of Birsinghpur P.W. 72 and Nageshwar Datt of Birsinghpur P.W. 75, who was one of the petitioner's polling agents at Birsinghpur. As against this evidence we have the testimony of R.W. 86 Mahabali of Belagarhi and R.W. 87 Sheoraj Bahadur himself. The petitioner's case is that the motive for Sheoraj Bahadur for having worked for the respondents No. 1 and 2 in the election was that the respondent No. 2 used to put up with Sheoraj Bahadur at Belagarhi and Birsinghpur when the two of them were in service, but the fact of any such friendly relations is denied by Sheoraj Bahadur as well as the respondent No. 2 (R.W. 70) and we do not believe that Sheoraj Bahadur worked for the respondents, whether at Belagarhi or Birsinghpur or the polling station.

17. The fifth and last patwari of the series is Bisheshwar Gir R.W. 78 who is a resident of village Kabiraha and in the election days he was the patwari of village Chehalua. Village Laukahi is about 2 miles from Chahalua and the polling of Laukahi and its hamlet Gurdinpurwa was Kabiraha. The case of the petitioner is that Bisheshwar Gir Patwari worked and canvassed for the respondents at Laukahi and Gurdinpurwa in the election days and at the Kabiraha polling station on the polling day; the canvassing at Laukahi is said to have been done in the company of Bhagwati Prasad Ghagh R.W. 82 by holding two election meetings there at the house of Sibta Din, one 15 or 16 days before the polling and the other 5 or 6 days before the polling. The petitioner's witnesses on this point are P.W.'s. 64, 65, and 66 Bansi, Bhagwan and Chandrika all of Laukahi and P.W. 67 Wasalat of Gurdinpurwa, and as against this testimony we have the testimony of Bisheshwar Gir himself R.W. 78, who denies having done any canvassing for the respondents at any place and says that Laukahi and Gurdinpurwa were not even in his circle, and of Bhagwati Prasad Ghagh R.W. 82 who was a worker of the respondents No. 1 and 2 and who denies having done any canvassing in the company of this Bisheshwar Gir. In these circumstances we are not satisfied that Bisheshwar Gir either assisted the respondents No. 1 and 2 in the election and our finding is that none of the five patwaris named by the petitioner has been proved to have worked for the respondents in the election and the mere fact that the respondents No. 2 was a Supervisor Kanoongo or a Naib Tahsildar in the constituency before the election can hardly be a sufficient ground for holding that any patwari worked for him or for the respondent No. 1 in this election.

18. Then there are the three Panchayat Raj Secretaries of whom the first is Mathura Prasad, Secretary of the Padaria Tula Panchayati Adalat. About him Gandan Lal P.W. 131 says that he canvassed for the respondents No. 1 and 2 in the Padaria Tula market 3 or 13 days before the polling, but this Gandan Lal is a resident of another village and also he was the petitioner's polling agent in the election. As against his testimony we have the testimony of Mathura Prasad himself R.W. 20 who says that he did no canvassing at all for the respondents No. 1 and 2, and we see no good reason to disbelieve him. On the polling day he was on official duty as a polling clerk at the Padaria Tula polling station and in para. 7(iii) (g) of the petition it is alleged that the Presiding Officer there tampered with the ballot boxes with the help of this polling clerk, but we shall consider this allegation when dealing with the para. 7(iii) (g).



19. The second Panchayat Raj Secretary is Suraj Narain Ojha R.W. 60 who is a resident of Ojhapurwa, hamlet of Husainpur Katauli, and was in the election days the Secretary of the Isanagar Panchayati Adalat. The petitioner's case about him is that in the election days he canvassed for the respondents No. 1 and 2 at Husainpur Katauli and its hamlet Avasthipurwa and the petitioner's witnesses on this point are Matabir of Husainpur Katauli P.W. 76 and Ram Lal and Ram Khilawan of Avasthipurwa P.W.s. 77 and 78. Suraj Narain Ojha himself R.W. 60 denies having done any such canvassing and he is supported by Puttu Lal of Husainpur Katauli R.W. 63. He is now a teacher in a District Board School while the District Board President is Sri Shri Ram Gupta, R.W. 73, who was an active worker of the respondents No. 1 and 2 in the election but this can hardly be a ground for holding that in the election days this Secretary worked for the respondents. Ojhapurwa is a very small habitation and it appears that there are only two families there, one of this man and the other of his wife's brothers viz., Anand Murti Ojha and Chaitnya Murti Ojha etc., who were the supporters of the respondents No. 1 and 2 in the election but according to Suraj Narain there is much hostility between him and his brother-in-law, and so if his brother-in-law supported the respondents No. 1 and 2 there can be no inference that he also went out of his way to support them.

20. The third Secretary in question is Sri Gopal R.W. 2, Secretary of the Amathi Panchayati Adalat, who is alleged to have canvassed for the respondents No. 1 and 2 in the election days at Amethi and at Dhaurara, which is about 2 miles from Amethi and where the respondent No. 2 lives. The petitioner's witnesses on this subject are Balak Ram P.W. 43 and Bhagwati Prasad P.W. 44 of Amethi and P.W. 100 Nusrat Ullah Khan of Dhaurara all of the three of whom were the petitioner's workers and polling agents in the election, and as against them we have the testimony of Sri Gopal himself R.W. 2 who denies having done any work for the respondents No. 1 and 2. Chhail Behari Lal R.W. 19 is a resident of Amethi and in this election he worked for the respondents No. 1 and 2; the petitioner's case is that Sri Gopal Secretary is a relation of this Chhail Behari Lal and so Sri Gopal also worked for the respondents, but Sri Gopal and Chhail Behari Lal deny the fact of any relationship between them and in these circumstances we are not satisfied that there is any relationship between the two or that because of any such relationship Sri Gopal worked for the respondents in the election. A hamlet of Amethi is Behnanpurwa and the petitioner has examined Umed Ali, Wali Mohammad, Jamaluddin, Buddha and Wahid of Behnanpurwa, P.Ws. 9 to 13, to say that on the polling day Chhail Behari Lal came to them to take them to the Amethi polling station for casting their votes and at that time he was accompanied by an official of the Panchayati Adalat; these witnesses do not fix the identity of this official, but the suggestion on behalf of the petitioner is that he was Sri Gopal Secretary; Chhail Behari Lal denies having ever visited Behnanpurwa in the election days and having even taken there Sri Gopal Secretary with him, and Sri Gopal also denies having ever gone to Behnanpurwa for any election work of the respondents No. 1 and 2, and we are not satisfied that Sri Gopal did any work for the respondents at Behnanpurwa either. This disposes of para. 7(iii)(d) of the petition.

21. Para. 7(iii)(e) of the petition has been partly deleted on the ground of vagueness and indefiniteness and does not contain any allegation of a corrupt practice. In para. 7(iii)(f) of the petition it is alleged that the Presiding Officer and Polling Officers at Rudpur-Gularia polling station were the officers of the Cane Development Department at Gola who canvassed for the respondents No. 1 and 2 at the polling station; the Congress candidate for the House of the People in this election for this area was Sri Rameshwar Prasad Newatia who has an interest in the Gola Sugar Mills, and the suggestion of the petitioner is that as such these officers were interested in him and in the Congress and because of it they rendered assistance to the respondents No. 1 and 2 also. It is alleged that electors who came to cast their votes at the polling booths brought with them identity slips issued to them on behalf of the Congress bearing the Congress election symbol of a pair of bullocks and the polling officials not only allowed the electors to take those slips with them into the polling compartments but also asked them to cast their votes in the ballot boxes bearing the same symbol; the Superintendent of Police happened to be at Padaria, two miles away from this polling station, and information of this wrongful conduct of the polling officials was conveyed to him there verbally whereupon he came up to this polling station and put a stop to it. The petitioner's witnesses on this subject are P.Ws. 122 Mohan Lal, 123 Babu Ram and 131 Gendan Lal, and all the three of them were his polling agents; another witness of the petitioner on this subject is Prag Dutt P.W. 118 who too was his polling agent there but he says that the Presiding Officer himself gave to the electors slips bearing the cycle symbol, which was the petitioner's election symbol, and he says nothing about the Congress election symbol.

The petitioner has not examined any elector who may have been thus canvassed nor has he examined the Superintendent of Police, and the respondents have examined Mashar Khan R.W. 57, a resident of village Gularia and an elector at this polling station, to say that no such thing happened at the polling station, and in these circumstances we are not satisfied that the polling officials at this polling station did any such act.

22. In para. 7(iii)(g) of the petition it is alleged that Sri Lakshmi Narain, Sub-Deputy Inspector of Schools, who was the Presiding Officer of the Padaria Tula polling station, tampered with the ballot boxes with the help of Mathura Prasad Panchayat Raj Secretary who was a polling clerk there, and in consequence of it the Election Commission ordered a repoll for one of the three booths of this polling station; the forms of account of ballot papers of the several candidates in form No. 14 prescribed under rule 46 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 show that in this repoll taken on 8th February, 1952, the petitioner got the majority of votes and his contention is that had there been no such tampering he would have got the majority of votes at the other two booths also. However, on his behalf there is no evidence of any tampering or even of any chances of tampering and his witness Kanhaiya Lal P.W. 117, who was one of his polling agents there, says only that when after the close of the poll the polling officials were handling the ballot boxes to show to the people present that they were intact, one of the boxes of the petitioner got opened all of a sudden; he says also that during the polling hours the Congress men used to go into the polling compartments of all the three booths but we find no such allegation in the petition. On the other hand Muthra Prasad himself R.W. 60 says that this box got opened because a polling agent of the petitioner himself handled it rather violently while examining it. It appears that it was because of this box that the Election Commission ordered the repoll in respect of booth No. 1 of this polling station. The petitioner's contention on the basis of the figures of the ballot paper accounts is that at booth No. 2 the number of ballot papers issued was 604 whereas only 311 ballot papers were found in the ballot boxes of all the candidates and 8 ballot papers were found rejected; similarly as regards booth No. 3 his contention is that only 297 ballot papers were found in ballot boxes of all the candidates and 12 ballot papers were found rejected whereas 632 ballot papers had been issued at this booth and his case is that because of this big discrepancy between the number of ballot papers actually issued and the number found in the ballot boxes it must be inferred that the ballot boxes had been tampered with. The reply of the respondents is that in the absence of any evidence of tampering or of any chances of tampering no such inference can be made and the alleged discrepancy in the number of ballot papers is due to the fact that the number of ballot papers issued includes the number for the House of the People also, or that the discrepancy may be due to some mistake in the accounting, or the smaller number of ballot papers in the ballot boxes may be due to the fact that some of the electors may have taken away their ballot papers with them surreptitiously instead of dropping them into the ballot boxes. In these circumstances we are not satisfied that there was any tampering of the ballot boxes at the polling station and this disposes of para. 7 (iii)(g) of the petition.

23. We now come to para. 7(iii)(h) of the petition which is about Sri Pratap Bahadur Saxena, Panchayat Raj Inspector, who worked as the Presiding Officer of the Nighasan polling station. It is alleged about him that he allowed the pitching of the Congress camp within 100 yards of the polling station and at this camp votes were canvassed and solicited and notices and signs were profusely exhibited exhorting the electors to vote for the Congress candidates, that he deliberately permitted one Daya Shankar to work for some time as the polling agent of the respondents No. 1 and 2 without any authority and that it was only when the petitioner's polling agent made written complaints to the Presiding Officer about the Congress camp and about Daya Shankar that the camp was removed to a greater distance and Daya Shankar was asked to go out of the polling station. The petitioner's solitary witness on this subject is P.W. 1 Girja Dayal, who was his polling agent at this polling station and who made the written complaints Ex. P1 and P2 to the Presiding Officer that day. However, the testimony of Girja Dayal does not show at all that Sri Saxena allowed the pitching of the Congress camp within 100 yards of the polling station; Girja Dayal says merely that he (Girja Dayal) noticed that the Congress camp was only 60 to 70 yards away from the polling station and when he brought this fact to the notice of Sri Saxena verbally and in writing Sri Saxena got the distance measured and finding it to be less than 100 yards he had the camp removed to the proper distance; this would not mean that Sri Saxena was in any way responsible for the pitching of the Congress camp at the place it was originally pitched, and it seems that the Congress workers themselves got the camp pitched at this place which appeared to

them to be 100 yards from the polling station; thereafter some noise appears to have been made at this place by the shouting of slogans as shown by Girja Dayal's written complaint Ex. P1, and he brought this fact to the notice of the Presiding Officer by means of Ex. P1 stating therein that the Congress slogans were being shouted at a place which he considered to be within 100 yards of the polling station; the Presiding Officer had the distance measured and finding it to be short of 100 yards he got the Congress camp removed to the proper distance as shown by his order on Ex. P1; however, Girja Dayal does not say what the distance was found to be on actual measurement, nor does the order of the Presiding Officer on Ex. P1 show what this distance was while Chandrapal R.W. 67 says that after measurement the Congress camp was removed to a site only five yards away from the original site, which means that the shortage must have been too small to be perceptible without actual measurement and nobody would have cared to notice it if the noise had not been made there; finding this noise obnoxious Girja Dayal brought it to the notice of the Presiding Officer, and to bring his objection within the election law he added that it was within 100 yards of the polling station; this objection made it necessary that the distance should be measured, and when on measurement it was found to be actually short the camp had to be removed to the proper distance in spite of the fact that the shortage was very small and was almost unnoticeable without actual measurement. The Presiding Officer has not been shown to be in any way responsible or answerable for this shortage, nor has it been shown that this shortage in any way materially affected the result of the election.

24. The petitioner's plea as regards Daya Shankar being deliberately permitted by the Presiding Officer to work as a polling agent without any authority appears to be equally frivolous. There is nothing in the statement of his witness Girja Dayal P.W. 1 to show that the Presiding Officer permitted Daya Shankar to work with the knowledge that Daya Shankar held no proper authority; Girja Shankar says only that he (Girja Dayal) found Daya Shankar working as a polling agent whereupon he asked the Presiding Officer to examine his authority, if any, and it happened when the ballot boxes were being examined before the commencement of the polls; he also made the written complaint Ex. P2 about it, and he says that when no authority was found with Daya Shankar he was sent out within 10 or 15 minutes of the making of the complaint; this means that the Presiding Officer took prompt action in respect of Daya Shankar also when it was brought to his notice that he held no authority to work as a polling agent and it happened just at the commencement of the polling if not before the polling. The complaint Ex. P2 does not appear to relate to Daya Shankar as his name is not mentioned in it; it is of a general nature only and says that the agents of the respondent No. 1 have failed to bring with them their forms of appointment and as such they should not be allowed to work as polling agents and the order of the Presiding Officer on this complaint shows that the complaint was made after 10 A.M., whereas according to Girja Dayal himself his grievance in respect of Daya Shankar was removed at or about the commencement of the poll at 8 A.M. The explanation of the respondent No. 1 is that his polling agents reached the polling station without taking with them forms of appointment and were, therefore, prevented by the Presiding Officer from working as polling agents; just then he himself reached the polling station at the commencement of the polling at about 8-30 A.M. and presented an application to the Presiding Officer with the request that the persons named therein should be allowed to work as his polling agents and then only the Presiding Officer permitted them to work as such. We find, therefore, that there was nothing objectionable in the conduct of the Presiding Officer of the Nighasan polling station and that in the conduct and management of the polling he did not do any act for the furtherance of the prospects of the election of the respondents No. 1 and 2.

25. The last instance of the officials assisting the respondents No. 1 and 2 in the election is that of the three village headmen or mukhias, Baij Nath, Kanhai Lal and Tulsī Ram; it was not contained in the election petition as originally presented and was only introduced by means of the amendment application dated 4th December, 1953, which was allowed by the Tribunal on 13th January, 1954. The allegations about it are contained in the new para. 7(lii) (1) of the petition which is to the effect that the respondent No. 1 procured the assistance of these headmen for furtherance of the prospects of his election by appointing them as his polling agents at the Nighasan, Dubaha and Tirkaulia polling stations respectively; it was not alleged that these village headmen did any other work also for the furtherance of the prospects of the election of the respondent No. 1 in addition to working as his polling agents at these polling stations on the polling day and performing such functions in connection with the poll as are authorized to be performed by a polling agent under Section 49(1) of the Representation of the People Act, 1951,

nor were any particulars of any such work given, and consequently when at the time of adducing the evidence the petitioner wanted to lead evidence to prove that they did other work also in furtherance of the prospects of the election of the respondent No. 1, he was prevented by the Tribunal from adducing such evidence. The respondent No. 1 filed a written statement saying that he did not procure any assistance of any village headmen knowing them to be as such and that some of the persons in question who were named as polling agents never attended the polls or worked as polling agents; he contended also that village headmen were not persons serving under the Government within the meaning of Section 123(8) of the Representation of the People Act, 1951 and that in any case the work of a polling agent does not amount to an assistance in furtherance of the prospects of the election. In view of the recent decisions of the Hon'ble Supreme Court it is now settled law that the village headmen of U.P. are persons serving under the Government of the State within the meaning of Section 123(8), but there is no legal bar to the appointment of a village headman, or in fact any person serving under the Government, as a polling agent nor is there any legal bar to his acting as such, provided he confines himself to only such functions in connection with the poll as are authorized under the law. The contention of the petitioner in these circumstances is that the mere appointment of these village headmen as his polling agents by the respondent No. 1 amounted to his obtaining their assistance in furtherance of the prospects of his election and that the mere presence of these persons as polling agents at the polling stations on the polling day amounted to the giving of such assistance as they were very influential persons.

26. At the time of arguments the petitioner's counsel gave up the case in respect of Baij Nath and pressed it in respect of Kanhai Lal and Tulsi Ram only. The register of Mukhias maintained at the Tahsil and produced by Sri Sheo Gopal P.W. 139, Assistant Registrar Qanoongo shows Kanhai Lal to be the Mukhia of Khairani and Tulsi Ram to be the Mukhia of Sarpatha and there is no evidence to the contrary. The petitioner obtained certified copies of the polling agency forms of these persons when the case was in the Faizabad Election Tribunal before its transfer to this Tribunal, but now the original polling agency forms are reported to be untraceable; as regards Tulsi Ram Mukhia, Sonasar Din P.W. 138 says that the respondent No. 1 obtained Tulsi Ram's signatures on the polling agency form in his presence 5 or 6 days before the polling and so the certified copy of his polling agency form has been admitted in evidence and marked Ex. P166; however, in respect of Kanhai Lal there is no evidence that he ever signed the polling agency form and even in respect of Tulsi Ram there is no evidence that he made any signatures on his polling agency form on the polling day at the polling station, and in these circumstances it is very doubtful if Kanhai Lal or Tulsi Ram really worked as the polling agents on the polling day at the polling station. The respondent No. 1 states on oath that he never appointed Tulsi Ram as his polling agent and that he does not remember if he appointed Kanhai Lal as a polling agent. As regards Kanhai Lal, Bhudar Lal P.W. 134 and Khub Chand P.W. 137 say that on the polling day they found this Mukhia at the Congress camp as well as inside the polling station; similarly Janki Prasad P.W. 135 says that he found him at the Congress camp as well as inside the polling station and also noticed him going into and coming out of the polling station several times; Khub Chand adds that Kanhai Lal Mukhia is an influential person. As regards Tulsi Ram, Mohammad Yahya P.W. 136 says that he is not only the village Mukhia but is also the Pradhan of the Gaon Sabha and is an influential person and that on the polling day he worked as the polling agent of Sri Karan Singh inside and outside the polling station similarly Sonasar Din P.W. 138 says that this Tulsi Ram is the village Mukhia and is also the Sahhapati of village Monda Buzurg with its 14 hamlets and as such he is very influential; he adds that on the polling day Tulsi Ram was working as Sri Karan Singh's polling agent at the polling station and in the lunch interval he sat at the Congress camp with 40 or 50 persons. On behalf of the respondent No. 1 there is no rebuttal of the testimony of these witnesses of the petitioner, but at the same time we are not satisfied from the testimony of these witnesses that Kanhai Lal or Tulsi Ram did anything that day beyond the authorized functions of a polling agent or that they rendered any assistance for the furtherance of the prospects of Sri Karan Singh's election they may have been present inside and outside the polling station on the polling day performing the authorized functions of a polling agent, but we do not think that they are persons so important or influential as to make the very fact of their appointment as polling agents the obtaining of their assistance for the furtherance of the prospects of the election or to make the very fact of their presence as the polling agents inside or outside a polling station the giving of any such assistance. We hold, therefore, that no corrupt practice of Section 123(8) has been proved in respect of any of these Mukhias either and this disposes of para. 7(iii) of the petition and of the corrupt practice of the obtaining of assistance from persons serving under the Government.

27. Now we come to para. 7(iv) of the petition which contains allegations about the major corrupt practice of undue influence. This para. is divided into the heads (a) to (n) out of which the heads (f), (g), and (k) to (n) have been ordered to be deleted on the ground of vagueness and indefiniteness, and we proceed to determine the allegations of the remaining heads. In para. 7(iv) (a) the allegation is that the respondent No. 1 and Sri Shri Ram Gupta visited village Bhajanpurwa a few days before the polling and threatened the residents there that their houses would be set on fire and they would be ejected from their tenancies if they voted for the petitioner or the respondent No. 4 and that as a result of this threat some of the electors of village Bhajanpurwa, including the five electors specified in this para, did not go to the polling station at all to cast their votes. This Sri Shri Ram Gupta is the President of the District Board on the Congress ticket and in the election he was an active worker and supporter of the respondents No. 1 and 2. The respondents admit the visit of Sri Karan Singh (respondent No. 1) and Sri Shri Ram Gupta to Bhajanpurwa in the election days but contend that it was for canvassing and propaganda only and that no threat was held out at all to any body there. The petitioner's solitary witness on this point is Mohan Lal P.W. 119 who is not of Bhajanpurwa itself but is of neighbouring village Nagwan only. In rebuttal the respondents have produced Nand Lal R.W. 35 who is of Nagwan but he denies not only the fact of the alleged threat but also the fact of the visit of the respondent No. 1 and Sri Gupta; Sri Gupta has been examined as R.W. 79 and he denies having held out any threat at Bhajanpurwa or at any other place although he does not remember if he visited Bhajanpurwa at all in the election days; the respondent No. 1 is R.W. 85 in this case and he denies having visited Bhajanpurwa in the election days in the company of Sri Shri Ram Gupta. In these circumstances the evidence adduced by the respondents on this point cannot be said to be very helpful or dependable but we think that the evidence produced by the petitioner himself is not at all satisfactory or sufficient and not much reliance can be placed upon it. In the petition it is stated that as a result of the alleged threat the electors No. 35, 36, 64, 69 and 81 did not go to the polling station Daulatpur to cast their votes, but this statement of the petitioner is falsified by the marked copy of the electoral roll showing that the electors No. 35 and 36 and 64 did cast their votes. We find, therefore, that it has not been proved to our satisfaction that any undue influence was exercised as alleged in para. 7(iv) (a) of the petition.

28. In para 7(iv) (b) of the petition it is alleged that the residents of village Kauria gave out that they would vote for the petitioner and the respondent No. 4 only whereupon Thakur Shankar Baksh Singh who was the zamindar's Zilladar of the village and was a worker of the respondents No. 1 and 8 in the election deliberately misguided them by making them believe that their polling station was Bhiraurea whereas in fact it was Dubaha as a result of this deception the residents of Kauria went to Bhiraurea to cast their votes on the polling day, and when they learnt there that their polling station was Dubaha only they proceeded to Dubaha but by the time they reached Dubaha the polling was over and so they could not cast their votes at all. It is contended that this deception practised by Shankar Baksh Singh upon the electors of Kauria was an interference on his part with the free exercise of their electoral right and as such it was undue influence. In their written statements the respondents No. 1 and 8 admit that Shankar Baksh Singh was their worker in the election but deny that he practised any such deception. To prove his case on this point the petitioner has examined eight residents of Kauria viz. P.W. 109 Mathura, P.W. 110 Dadri, P.W. 111 Ujagar, P.W. 112 Gokaran Mukhia, P. W. 113 Baldeo, P. W. 114 Angney, P.W. 115 Jagannath and P.W. 116 Gole, and to rebut their testimony the respondents have examined Shankar Baksh Singh himself as R.W. 34, who denies having told the residents of Kauria that their polling station was Bhiraurea and who says further that he did not work at all for any body in the election. This Shankar Baksh Singh certainly worked for the respondents No. 1 and 8 in the election as admitted by the respondents in their written statement and it is possible that he told the residents of Kauria that their polling station was Bhiraurea whereas it was in fact Dubaha, but at the same time it is also possible that he himself was under a mistaken belief that the polling station for Kauria was Bhiraurea and this mistaken belief may have been shared by others also. The grounds for such a mistaken belief appear to be that in the petition itself Kauria is described as a hamlet of Chakra and Gokaran Mukhia P.W. 118 admits that Kauria was included in the Chakra Patwari circle; the polling station for this circle was Bhiraurea and so every body including Shankar must have believed that the polling station for Kauria was Bhiraurea; however, in the electoral roll Kauria was actually shown as attached to the Dubaha polling station on the assumption that it formed part of the Khairani patwari circle, but nobody appears to have noticed this entry of the electoral roll with the result that the residents of Kauria went to Bhiraurea on the polling day to cast their votes under the mistake belief that this was their polling station; the mistake was discovered only after they

had reached the polling station; and then it was too late for them to reach Dubaha in time to cast their votes, and that is why not a single resident of Kauria could cast his vote. In these circumstances we are not satisfied that even if Shankar Baksh Singh told the residents of Kauria that their polling station was Bhiraure he did so to misguide them deliberately or that he was not under an honest mistaken belief himself on this point. We may also point out that in the 2nd portion of para 7(iv) (b) of his petition the petitioner himself says that Kauria is in the Khairani patwari circle, whereas in the last portion of this para he says that it is a hamlet of Chakra, and his witness Gokaran Mukhia P.W. 112 also admits that it is in the Chakra patwari circle, and there is no explanation of this discrepancy. We hold, therefore, that this part of the petitioner's case has not been proved satisfactorily.

29. Paras 7 (iv) (c) & 7(iv) (d) of the petition are concerned with Chhail Behari Lal R.W. 19, who is a resident of Amethi and was an important worker of the respondents No. 1 and 2 in the election. In para 7(iv) (c) it is alleged that on the polling day he along with Sri Gopal Panchayat Raj Secretary R.W. 2 took 34 electors specified in this para to the Amethi polling station in bullock carts to cast their votes, but when at the polling station they told him that they would vote for the petitioner and the respondent No. 4 he became angry and abused them and threatened to beat them if they did not go back and consequently out of fear these electors returned to their village without casting their votes. These electors are residents of Behnanpurwa, which is a hamlet of Amethi, and appear to be Muslim carders and out of them Ummad Ali, Wali Mohammad, Jamal Uddin, Buddha and Wahid have been examined by the petitioner as P.W's. 9 to 13. In para 7(iv) (d) it is alleged that the 18 electors specified in this para went to Amethi polling station to cast their votes for the petitioner but Chhail Behari Lal and his men forced them to leave the polling station without casting their votes; these electors were residents of Bhukrayya, another hamlet of Amethi, and out of them Chhuttan and Murli have been examined as P.W's. 101 and 102. Another witness of the petitioner on this subject is Nusrat Ullah Khan of Dhaurara, P.W. 100, who was the zamindar of Behnanpurwa and Bhukrayya in the election days and was an important worker and supporter of the petitioner in the election; those electors of Behnanpurwa and Bhukrayya were his tenants and he says that 15 or 20 days after the polling Chhail Behari Lal met him and apologized to him for preventing those electors from casting their votes. On behalf of the respondents No. 1 and 2 it is denied that Chhail Behari Lal or any other worker of theirs abused or threatened any such electors or prevented them from casting their votes. It appears that no residents of Behnanpurwa cast his vote and only a very few residents of Bhukrayya cast their votes, and the explanation on behalf of the respondents for this is that most of the residents of Bhukrayya reached the Amethi polling station at a late hour when there was great crowd and rush at the polling station and so they returned from the polling station without casting their votes; only the few residents of Bhukrayya who had reached the polling station earlier were successful in casting the votes and one of them was Ratnu R.W. 7; the Behnanpurwa people were on their way to the polling station when the Bhukrayya people were returning from the polling station, and when the latter told the former of the rush and crowd at the polling station the former decided to return to their village without even going up to the polling station. Sri Gopal, Panchayat Raj Secretary R.W. 2 and Chhail Behari Lal R. W. 19 deny having gone to Behnanpurwa on the polling day or having brought any voters from there; also Chhail Behari Lal denies having threatened any electors or having prevented them from casting their votes; further Ratnu of Bhukrayya R.W. 7 gives the explanation as to why most of the residents of Bhukrayya returned from the polling station without casting their votes and why no resident of Behnanpurwa cast his vote. It is significant that Ratnu's electoral roll number is 103 and this number also is included in the list given in para 7(iv) (d) implying that Ratnu was forced by Chhail Behari Lal to leave the polling station without casting his vote, but Ratnu says that he actually cast his vote and marked copy of the electoral roll too shows the same thing. Another witness of the respondents is R.W. 6 Behari of Bhukrayya who says that he did not go at all to the polling station that day nor did Murli P.W. 102, although the suggestion on behalf of the petitioner is that Behari also went to the polling station and was threatened there by Chhail Behari Lal; it is noteworthy that Behari and Ratnu both were named by the petitioner in his list of witnesses but were not examined by him. Nusrat Ullah Khan P.W. 100 appears to have been a very influential person and villages Behnanpurwa and Bhukrayya belonged to him and also he has married a woman of Behnanpurwa, and in these circumstances it appears to be very doubtful if Chhail Behari Lal would dare to threaten any electors of these villages and we do not believe that he threatened them or prevented them from casting their votes in favour of the petitioner, and the explanation offered on behalf of the

respondents for most of them having not cast their votes appears to be very reasonable and probable and this disposes of para 7(iv)(c) and (d) of the petition.

30. In 7(iv)(e) of the petition it is alleged that a few days before the polling the respondent No. 1 Sri Karan Singh visited the village Grant No. 12 and told the people there that if they would vote for the petitioner they would have to suffer dire consequences because of which threat the residents of this village did not go to the polling station at all on the polling day to cast their votes specially as the polling station was Jhandi where Sri Karan Singh resides. On behalf of the respondents it is denied that Sri Karan Singh visited this village in the election days or held out any threat there and their explanation for the residents of this village not having cast their votes is that there are difficulties of communication between this village and Jhandi in as much as the way lies through a jungle haunted by tigers and also a river has to be crossed for which /4/- per head have to be paid as the ferry charges both ways. The petitioner has examined 8 residents of this village who depose about the alleged threat and they are P.W. 92 Parmeshwar Din, P.W. 93 Hardwari, P.W. 94 Narain, P.W. 95 Karhle, P.W. 96 Mullu, P.W. 97 Banwari Lal, P.W. 98 Balla and P.W. 99 Sewak, and out of them Banwari Lal admits also the difficulties of communication. The respondents themselves have examined three witnesses of this village and its hamlet Randhavapurva and they are R.W. 24 Pershad, R.W. 25 Chhotey Lal and R.W. 26 Debi Sahai who say that Sri Karan Singh did not visit this village at all in the election days nor did he hold out any threat and that the residents of this village did not go to cast their votes as there were difficulties of communication and nobody had come to them to ask for votes; it seems that because of the difficulties of communication nobody on behalf of any party or candidate cared to go to this village or its hamlets to ask for votes and for the same reason the residents of this village or its hamlets did not go to the polling station on the polling day, and do not believe that Sri Karan Singh held out any threats to them.

31. Para 7(iv)(f) and (g) of the petition having been ordered to be deleted, we come to para 7(iv)(h) wherein it is alleged that on the polling day at the polling station Malinia Hoshiar Singh of village Patwara, a worker and polling agent of the respondents No. 1 and 2, was shouting that any electors voting for the cycle symbol would be beaten with shoes. On behalf of the respondents it is admitted that this Hoshiar Singh was a polling agent of the respondent No. 1 at the Malinia polling station but it is denied that he did any such shouting. The petitioner's witnesses on this point are P.W. 40 Ram Bharosey, P.W. 41 Bhawani Shankar and P.W. 42 Sidh Gopal, and they say that at about 10 A.M. Hoshiar Singh was shouting like this at the Congress camp; Ram Bharosey P.W. 40 was working for the petitioner outside the polling station, and on hearing this shouting he sent information of it to P.W. 42 Bhawani Shankar who was working as the petitioner's polling agent inside the polling station; Bhawani Shankar complained of it verbally to the Presiding Officer who came out to see the thing for himself but by that time Hoshiar Singh had run away and he never made appearance again at the polling station that day; P.W. 42 Sidh Gopal is a cloth dealer of Palia who takes his cloth to the neighbouring markets for sale and at that time he was returning from the Paria market and this way was through Malinia. All the three of these witnesses are interested persons and none of them is independent or reliable while the Presiding Officer himself has not been examined. The respondents have examined Kallu Mal R.W. 71 on this point; he says that he was a Congress worker in this election and on the polling day he worked at the Congress camp at the Malinia polling station from 9 A.M. to 5 P.M.; according to him Hoshiar Singh did no such shouting but worked inside the polling station only from 9 A.M. right upto 5 P.M. and it is incorrect that he did any such shouting or ran away from the polling station at 10 A.M. Hoshiar Singh himself has not been examined by the respondents but we see no good ground to believe the petitioner's evidence on this point in preference to the respondents' evidence and we hold that the petitioner has failed to prove this part of his case.

32. The allegation in para 7(iv)(i) of the petition is that Sri Shri Ram Gupta R.W. 79, who is the President of the Kheri District Board on the Congress ticket and who was an active worker of the respondents in this election, visited village Jamhaura one day before the polling viz. on 21st January 1952 and spoke there on the loud speaker and said that any persons supporting the petitioner and the respondent No. 4 would be made to suffer its consequences and that any Muslim voting against the Congress would have to go Pakistan, and the petitioner's case is that Sri Karan Singh also was with Sri Gupta at that time. On behalf of the respondent it is denied that Sri Gupta or Sri Karan Singh visited Jamhaura on 21st January 1952 or that Sri Gupta made any such speech there. The

petitioner's witnesses on this point are P.W. 19 Subedar Singh, P.W. 20 Sankata, P.W. 21 Ashraf, P.W. 22 Ali Ahmad and P.W. 26 Ram Deo; the first four are of Jamhaura and the fifth is of the neighbouring village Kusaha; but none of them is independent or reliable; Subedar Singh and Ram Deo were workers of the petitioner in the election and Subedar Singh was his polling agent also; this Subedar Singh is the brother and manager of the Rani of Manjhaura who was the zamindar of Jamhaura before the zamindari abolition, and as such Sankata, Ashraf and Ali Mohammad must be under his influence. The respondents witnesses to the contrary are R.W. 31 Raghunandan Prashad of Jamhaura, R.W. 69 Ashraf Lal of Dinapurwa adjoining Jamhaura, R.W. 79 Sri Gupta himself and R.W. 85 Sri Karan Singh himself all of whom say that Sri Gupta or Sri Karan Singh did not visit Jamhaura one day before the polling nor did they hold out any threats there. We see no good reason to believe the petitioner's case on this point in preference to the respondents case.

33. In para 7(iv) (j) of the petition it is alleged that on the night before the polling Gopi Nath, an influential man of Palia and an active supporter of the respondents No. 1 and 2 in the election, paraded the streets of Palia with his followers belling the people that those who would oppose the respondents No. 1 and 2 in the election would be entered in the black list of the Congress Government and their supplies of essential commodities would be cut off and they would be put to various kinds of hardships; it is also alleged that the same night this Gopi Nath and his men went to the House of Ori Lal of Palia, a worker of the petitioner, and asked him to give up his support for the petitioner and on his refusal they abused and threatened him. On behalf of the respondents all these facts are denied. The petitioner's witnesses on this subject are Sri Krishna Datt Bajpai P.W. 2, Brij Kishore of Palia P.W. 34, Madan Lal of Palia P.W. 35, Pearey Lal of Palia P.W. 36 and Ori Lal himself P.W. 91. Sri Bajpai P.W. 2 is a respectable man of Lakhimpur who was the petitioner's worker in the election and also worked as his polling agent on the polling day on 22nd January 1952 at the Palia polling station and he says that on this account he was at Palia from the morning of 21st January 1952; he says that in the evening of 21st January 1952 he saw his procession of Gopi Nath in which the alleged threats were being shouted out; he adds that at about 2-30 A.M. that night Ori Lal came and informed him that Gopi Nath and his men had come to his house just then and had abused and threatened him. This Ori Lal was the peon of Rani Taj Kaur, zamindar of Palia, and Brij Kishore P.W. 34 was her zildar; Brij Kishore deposes about the procession and about the shouting of threats and says that the same evening at about 7 or 8 P.M. Ori Lal was abused and threatened. Madan Lal P.W. 35 deposes about the procession and shouting of threats but not about Ori Lal's incident; he names Sharda Prashad R.W. 34, brother of Gopi Nath, as one of the processionists whereas nobody else names Sharda Prashad. Pearey Lal P.W. 36 deposes about the procession but does not say that any threats were shouted out in this procession and he adds that Ori Lal was abused and threatened at his house at 6 or 7 P.M. Lastly Ori Lal P.W. 91 deposes about the processions but does not say that any such threats were shouted out; as regards himself he says that he was abused and threatened by Gopi Nath and his men twice that day, once in the evening at 7 P.M. and again in the night at 8 P.M. Thus there is great discrepancy in the petitioner's evidence as to whether any threats were shouted out in the alleged procession and as to whether Ori Lal was really abused or threatened by Gopi Nath and others. The case of the respondents is that no processions at all were taken out at Palia in the election days on their behalf nor were any threats shouted in any such processions nor was Ori Lal ever abused or threatened and their witnesses on this subject are Rameshwar Chand Garg of Palia R.W. 36, Babu Ram of Palia R.W. 37, Pir Baksh of Palia R.W. 38, Chandra Bhal of Palia R.W. 40, Kallu Mal of Palia R.W. 71 and Sharda Prashad of Palia R.W. 84, brother of Gopi Nath; Gopi Nath himself has not been examined. The statement of Chandra Bhal Shukla R.W. 40 shows that there are two rival parties at Palia, one of Ram Krishna Rakupuria who is a partizan of the petitioner, and the other of this Sharda Prashad who is the Chairman of the Palia Town Area Committee and is a Congressman and it appears that the witnesses examined by the petitioner and the respondents belong to one party or the other and cannot be said to be independent or reliable. In these circumstances we are not satisfied that any threats were held out at Palia to the people in general or to Ori Lal in particular and this disposes of para 7(iv) (j) of the petition. Heads (k) to (n) of para 7(iv) have been ordered to be deleted on the ground of vagueness and indefiniteness, and the result is that none of the instances of the corrupt practices of undue influence set forth in para 7(iv) have been proved to our satisfaction.

34. Paras 7(v), (vi) and (vii) of the petition containing allegations of some other corrupt practices have been ordered to be deleted and so we come now to para 7(viii) which says that the respondents No. 1 and 2 made use of the national



symbols in furtherance of the prospects of their election and also used the name of Mahatma Gandhi in their election propaganda. In the further and better particulars given by the petitioner on 16th September 1953 he stated that the national symbols used by the respondents were the national flag and the names of the father of the nation Mahatma Gandhi; the national flag was used by being displayed on their cars and trucks and in their election meetings and processions and by being printed on their leaflet Ex. P5 and the name of Mahatma Gandhi was used by the respondents in their leaflets Ex. P29, Ex. F38, and Ex. P34. In these further and better particulars the petitioner stated also that the distribution of these leaflets affected the result of the election whereas there was no such allegation in the petition and so by its order dated 6th October 1953 the Tribunal directed that the allegation about the material effect could not be accepted. The respondents No. 1 and 2 deny that the national flag was ever used on their motor vehicles or in their meetings or processions and they contend that the name of Mahatma Gandhi is not a national symbol inasmuch as a name is not a symbol at all. About the leaflet Ex. P3 their explanation is that the national flag was printed on it by the Printing Press by mistake without any such instructions from them, but the mistake was discovered just after the printing and so the printed copies of this leaflet were not distributed or circulated at all. On behalf of the petitioner there is no evidence that the national flag was used at any election meetings of the respondents; he has given some evidence to show that this flag was used in their processions at Dhaurara and Palia, but the evidence adduced by the respondents shows that no processions were taken out at all on their behalf at Dhaurara or Palia; also he has given some evidence to show that the car of the respondent No. 1 and Sri Shri Ram Gupta bore the national flag when it visited Ramia Behar, Kharwahia and Jamhaura in the election days, but the evidence adduced by the respondents shows that their cars used to bear the Congress flag only in the election days and not at all the national flag. From the evidence on the record we are not satisfied that the respondents No. 1 and 2 or their workers ever used the national flag in their election propaganda by displaying it on any vehicle or in any processions or meetings, and in fact there could have been no reason for the respondents or their workers to use the national flag when the Congress flag, not much distinguishable from the national flag, was at their disposal and could serve their purpose. Also we do not think that the mere name of Mahatma Gandhi is a national symbol inasmuch as a symbol is a figure or representation entirely different from a name, and also Section 124(5) of the Representation of the People Act, 1951, according to which the use of a national symbol is a minor corrupt practice, does not mention Mahatma Gandhi's name or any other name as an illustration of a national symbol. On behalf of the petitioner we have not been referred to any case in which the mere name of Mahatma Gandhi may have been held to be a national symbol; the only case cited on his behalf in this connection is a decision of a Dharwar Election Tribunal reported in the Election Law Reports, Volume IV, page 380, but in that case the candidate used a picture of Mahatma Gandhi with folded hands, making it appear that Mahatma Gandhi himself was soliciting votes for the candidate and their is no such implication in the present case.

35. We now take up the question of Ex. P3 and the use of the national flag on it. This leaflet purports to be an appeal of Pt. Jawahar Lal Nehru for votes for the Congress in the election and is entitled as such; it is in Hindi and on it appears the bust of Pt. Nehru with the national flag in the background. It was printed at the Sri Krishna Press of Lakhimpur Kheri and the respondents have examined Sri Bala Prasad Verma, proprietor of this Press, as R.W. 46, who says that when the order was placed with him for the printing of this leaflet he was told also to print a picture of Pt. Nehru on it but was not told that the national flag or a tri-colour flag should also be printed; he adds that the picture of Pt. Nehru with the national flag was printed on Ex. P3 by a mistake of his compositor and he means to say that perhaps this was the only block of Pt. Nehru ready available for printing at that time and nobody noticed that it included the national flag also; he says further that when the printed copies were sent to the customer for taking delivery, he refused to take delivery on the ground of this mistake, and so the copies came back to the Press undelivered and must have been ultimately sold by the Press as waste paper after the election and it would be incorrect to say that they were distributed during the election; he says also that at first he was refused payment for this leaflet on the ground of this mistake but after the declaration of the result of the election and the success of the Congress candidates at it he persuaded Pt. Bansidhar Misra to order payment for it and the payment was made to him accordingly. The case of the petitioner is that printed copies of Ex. P3 were freely distributed and circulated in the constituency in the election days. The respondents No. 1 and 2 included

the cost of this leaflet in their returns of the election expenses and also the respondent No. 1 attached a copy of the leaflet to his return, and the explanation of the respondents No. 1 and 2 is that they did so only because Pt. Bansidhar Misra had got the payment made for it.

36. The question for consideration is as to whether copies of Ex. P3 were distributed by the respondents no. 1 and 2 and thereby they made use of the national flag for the furtherance of the prospects of their election. Ex. P3 is an appeal for votes for them in the name of Pt. Jawahar Lal Nehru and 5,000 copies of it were got printed for this constituency and the cost was included by the respondents no. 1 and 2 in their returns of election expenses, and in these circumstances a presumption does arise that the printed copies were distributed in the constituency specially when the petitioner has adduced some evidence to show that there was actual distribution, but the presumption is rebuttable and we think that the respondents have sufficiently rebutted it by their evidence. The petitioner's evidence is that the printed copies were distributed at Jamshaura, Palia and Jathra; about Jamshaura his witness Subedar Singh P.W. 19 says that the distribution was by Sri Karan Singh respondent no. 1 and Sri Shri Ram Gupta when they visited Jamshaura on 21st January, 1952, one day before the polling, and threatened the people there; this Subedar Singh was admittedly the petitioner's worker in the election and is not independent or impartial; as already mentioned Sri Karan Singh and Sri Shri Ram Gupta deny having visited Jamshaura at all on 21st January, 1952 and having held out any threats there and they deny also having distributed any copies of this leaflet. The petitioner's witnesses about the distribution at Palia are P.W. 34 Brij Kishore, P.W. 35 Madan Lal, P.W. 36 Pearay Lal, and P.W. 38 Baij Nath; all of them are of Palia and appear to belong to the party of Ram Krishna Kakupuria who is a supporter of the petitioner and is hostile to the Congress, and they do not name any particular individual who may have distributed copies of Ex. P3 at Palia. As regards the distribution at Jathra the petitioner's witnesses are P.W. 79 Rameshwar Prasad of Jathra and P.W. 81 Madho Ram of the neighbouring village Pakaria; they say that the respondent no. 2 and Sri Shri Ram Gupta visited Jathra in the election days and there they gave some election literature including copies of Ex. P3 to Chakarpan for distribution; Rameshwar Prasad names Chhanu Lal Shukla also in this connection but Madho Ram does not name him; Rameshwar Prasad and Madho Ram do not appear to be independent witnesses and Sri Jagannath Prasad respondent no. 2 (P.W. 70), Sri Shri Ram Gupta R.W. 79 and Chakarpan R.W. 61 deny the fact of any such distribution. P.W. 60 Avadh Behari Lal of Hardwahi worked for the petitioner in the election and he says that in his election tour he came across copies of Ex. P3 at several places but his testimony cannot be accepted as credible at all in view of the fact that he has been an enthusiastic partisan of the petitioner throughout. In para. 7(viii) of the petition it was alleged specifically that the respondents no. 1 and 2 made use of this national symbol and in the further and better particulars it was alleged that the printed copies of Ex. P3 were distributed by the respondents no. 1 and 2 and their workers; the petitioner adduced evidence to show that this distribution was by the respondents no. 1 and 2 by Sri Shri Ram Gupta and by Chakarpan, but all the four of them have come forward to deny any such distribution. Also the respondents no. 1 and 2 have examined the press proprietor Shri Bala Prasad Verma R.W. 46, who says that the printed copies of Ex. P3 remained at the Press only in the election days and so there was no question of their distribution, and it is significant that originally Sri Bala Prasad was included by the petitioner in his own list of witnesses, and taking all these facts into consideration we are satisfied that there was no distribution or circulation of the printed copies of Ex. P3 in the election days and as such there was no use of the national flag by the respondents no. 1 and 2. An attempt has been made on behalf of the respondents no. 1 and 2 to show that in the matter of payments of the printing charges Ex. P3 stood on a different footing from their other election literature and that the payment for Ex. P3 was made to the Press not along with the payment for the other election literature but as long as 3 or 4 months after the polling, but the documentary evidence shows that the payment for Ex. P3 was also made when payment for the other literature was made about a month and a half after the polling; however, this would not necessarily mean that printed copies of Ex. P3 also were distributed in the constituency in the election days just like the other election literature and this disposes of para. 7(viii) of the petition.

37. Para. 7(ix) of the petition deals with the corrupt practice of publication of false and defamatory statements and at the evidence stage the petitioner pressed this part of his case with great vehemence, but at the time of arguments his counsel gave up this part of the case altogether on the ground of a technical defect, vide the statement dated 25th March, 1955 of his counsel Sri H. N. Misra. Para. 7(x) deals with the corrupt practice of procuring vehicles for the elections

and para. 7(xi) with the corrupt practice of personation but the Tribunal has ordered the deletion of these allegations on the ground of vagueness and indefiniteness and we, therefore, come to para. 7(xii) of the petition which says that on the polling day during the polling hours Sri Shri Ram Gupta, President of the District Board, visited the Motipur polling station and made a speech there within 100 yards of the polling station soliciting votes for the respondents No. 1 and 2 in contravention of Section 130 of the Representation of the People Act, 1951; on behalf of the respondents it is admitted that Sri Gupta visited the Motipur polling station but it is denied that he made any speech there or solicited votes within 100 yards of the polling station. The petitioner's witnesses on this subject are P.W. 45 Bhagwan Din son of Ajudhia, P.W. 46 Banwari Lal son of Bansilal, P.W. 47 Bachchu Lal, P.W. 48 Chhedi Lal, P.W. 49 Pearey Lal, P.W. 50 Bhagwan Din son of Ram Lal and P.W. 51 Banwari Lal son of Raghunandan; they all belong to Motipur and the explanation of the respondents for their having come into the witness box for the petitioner is that in the zamindari days Motipur belonged to the Singhai Estate and the Rajkunwar of Singhai was actively helping the petitioner in the election. The petitioner's other witnesses on this point are P.W. 52 Mannu Lal, P.W. 53 Khushi Ram and P.W. 54 Jagannath all of them being residents of Hardwahi, and the respondents' case is that they have come forward to depose for the petitioner because of the influence of Avadh Behari Lal P.W. 60, an active worker of the petitioner in the election and Khushi Ram P.W. 53 admits his being a relation of Avadh Behari Lal. The petitioner's last witness on this point is Husain P.W. 55, but he does not mention Sri Shri Ram Gupta by name and gives his description only as a fair-coloured, thin and tall person which can be said to be a correct description. The respondent No. 1 himself is said to have been present with Sri Gupta on that occasion. The respondents have examined R.W. 39 Dambar Datt of Singhai, R.W. 54 Vishnu Narayan of Singhai, R.W. 79 Sri Gupta himself, R.W. 76 Shri Ranjit Singh Presiding Officer of the Notupur polling station and R.W. 85 Sri Karan Singh respondent No. 1 himself to say that there was no such soliciting of votes by Sri Gupta. We see no good reason to accept the petitioner's evidence in preference to the respondents' evidence and we are not satisfied about any such soliciting of votes by Sri Gupta.

38. Some other allegations of undue influence were made in para. 7(xiii) and (xiv) of the petition but these allegations have been ordered to be deleted by the Tribunal on the ground of vagueness and indefiniteness. In para. 7(xv) it is alleged that the Information Department of the Uttar Pradesh Government published a large number of pamphlets which were distributed broadcast in the constituency by the respondents No. 1 and 2 and their agents and workers to further the prospects of their election without paying or accounting for them and a list of such pamphlets is also given in this para; however, the petitioner's counsel concedes that this does not amount to the major corrupt practice of a obtaining assistance from persons serving under the Government within the meaning of Section 123 (8) of the Representation of the People Act, 1951, and his contention only is that because the respondents used those publications for the furtherance of the prospects of their election they should have included the cost of these publications in their returns of election expenses which they have got done and so these returns are false in material particulars and as such they have committed the minor corrupt practice of making and verifying the returns of election expenses which are false in material particulars within the meaning of Section 124(4) of the Act. Thus the allegations of this para. 7(xv) are only an attack upon the veracity of the returns of election expenses and as such we shall discuss them under issue No. 6 when dealing with these returns. Para. 7(xvi) contains allegations about an irregularity that the ballot boxes used in this election were not of the required standard and were, therefore, vulnerable, but these allegations have been ordered to be deleted on the ground of vagueness and indefiniteness. Para. 7(xvii) contains allegations about some other irregularities and as such they shall be dealt with under issue No. 5. This brings us to the end of para. 7 of the petition and exhausts the list of corrupt practices with the exception of the returns of election expenses being false in material particulars which we shall deal with under issue No. 6, and in view of all that has been said above we find that no corrupt practice has been proved while no illegal practice within the meaning of Section 125 of the Act has been alleged and this disposes of issue No. 4.

39. **Issue No. 5.**—Para. 7(xvii) containing allegations of irregularities has been divided into heads (a) to (l) out of which the heads (a) and (f) to (l) have been ordered to be deleted on the ground of vagueness and indefiniteness while the head (e) has not been pressed, with the result that we are left with the heads (b), (c) and (d) only. In para 7(xvii) (b) the allegation is that at the Isanagar and Ramnagar Labheri polling stations the Presiding Officers issued the

House of the People ballot papers to the electors for voting at the Assembly polling booths; with the result that at the time of the counting of votes nearly all the ballot papers found in the Assembly ballot boxes of these polling stations were those of the House of People and were, therefore, rejected as invalid or unauthorized. It was alleged also that at these polling stations some voters even went away without casting their votes because of the issue of wrong ballot papers, but this allegation was ordered to be deleted on the ground of vagueness and indefiniteness. According to the petitioner this issue of wrong ballot papers materially affected the result of the election. The respondents by their written statements admit that such a mistake was committed but contend that it had no material effect upon the result of the election. To show that this mistake materially affected the result of the election the petitioner has referred us to the Record of Rejected Ballot Papers prepared by the Returning Officer for these polling stations in Form 15 under rule 46 (I) (vii), and the respondents also rely on this Record; this Record shows that for Ramnagar Labheri polling station the total number of rejected votes was 1117, the ground of rejection being that the ballot papers found were of the House of the People; similarly the total number of rejected votes for Isanagar polling station was 1869, making up the grand total of rejected votes as 2986. Out of 2986 rejected votes the petitioner's rejected votes numbered as 691, viz. 340 for Ramnagar Labheri and 351 for Isanagar; these of respondent No. 4 numbered as 753 viz. 340 for Ramnagar Labheri and 413 for Isanagar; those of respondent No. 1 were 732 viz. 189 for Ramnagar Labheri and 543 for Isanagar; and those of respondent No. 8 were 736 viz. 170 for Ramnagar Labheri and 556 for Isanagar, leaving the balance of 84 which was the number of rejected votes of Sri Jagdamba Prasad and Sri Shyam Lal for these polling stations. If these numbers of rejected votes are added to the numbers of valid votes secured by the candidates, the total of Sri Karan Singh respondent No. 1 will come to 20,362, that of Sri Jagannath Prasad respondent No. 8 will come to 80,297, that of the petitioner will come to 17,396 and that of the respondent No. 4 will come to 16,447, and there will be no change at all in the respective places of the several candidates. Sri Jagdamba Prasad and Sri Shyam Lal secured a smaller number of votes and so they are out of the picture altogether. We find, therefore, that although there was the irregularity in question yet it has not materially affected the result of the election.

40. In para 7(xvii) (c) the allegation is that the Returning Officer failed to send the list of the electors of village Bhurjania to the Presiding Officer of the Birsinghpur polling station and so the residents of this village had to go back from the polling station without casting their votes. The respondents plead their want of knowledge on this point and the petitioner had examined three witnesses in his support viz. P.W. 73 Jangal, P.W. 74 Dalai *alias* Buddhai and P.W. 75 Nageshwar Datt. However, this Nageshwar Datt was the petitioner's polling agent at this polling station and he admits that even the electoral roll sent to him by the petitioner for this polling station did not contain the name of any resident of Bhurjania, which means that there was some mistake in the preparation of the electoral roll of this constituency and the residents of this village were committed from the electoral roll altogether. Also the petitioner has not been able to satisfy us that the residents of this village were actually included in any portion of the electoral roll of this constituency, and our finding, therefore, is that the residents of Bhurjania could not cast their votes because their names were not at all in the electoral roll of the constituency, and as such this fact cannot be a valid ground for interfering with the election.

41. In para 7(xvii) (d) it is alleged that at the Taliyar polling station the symbol of the petitioner was not to be found and as such it could not be properly displayed and this materially affected the result of the election, and the respondents deny all this. The petitioner's witnesses on this point are P.W. 87 Bhagwati Prasad, P.W. 126 Sri Ram Pal Singh who was the Presiding Officer of Taliyar, and P.W. 141 the petitioner himself, and the respondents have examined no witnesses on this point. The evidence of the petitioner's witnesses shows that the petitioner's symbol cycle was not found in the official papers at the polling station, and so the Presiding Officer improvised a symbol for him out of the cycle symbol of the respondent No. 4 by clipping off the black circle around the cycle, with the result that the paper bearing the improvised symbol became circular in shape and smaller in size than the actual one, whereas the symbols of the other candidates were on larger pieces of paper rectangular in shape. However, there is no evidence at all that this had any material effect upon the result of the election, and in fact when on the polling day a written objection Ex. P42 was presented to the Presiding Officer P.W. 126 about it he noted down upon it his order Ex. P42A that the irregularity in question did not affect the symbol in any way. We are of the opinion that the difference in the size and shape of the paper bearing the petitioner's symbol had no material effect upon the result of the

election. Our finding, therefore, is that although there were the irregularities mentioned in para. 7(xvii) (b) and (d) of the petition yet they did not materially affect the result of the election.

42. **Issue no. 6 and 7.**—These issues relate to the minor corrupt practice of making and verifying a return of election expenses which is false in material particulars, and the allegations about it are contained in para. 8 of the petition and also in para. 7(xv). Para. 8 is divided into sub-paras (a) to (u) out of which the sub-paras (j), (n), (o), (p), (r) and (u) have been ordered to be deleted on the ground of vagueness and indefiniteness. The contention of the petitioner is that the items of expenditure in question were in fact incurred by the respondents No. 1 and 2 or on their behalf but were not shown in their returns of election expenses and this omission makes the returns false in material particulars and as such the omission amounts to a corrupt practice within the meaning of Section 124(4) of the Representation of the People Act, 1951 and this corrupt practice has materially affected the result of the election. It is not his contention that this omission was made by the respondents, who themselves were their election agents, to keep their total expenditure within the prescribed limit or to conceal the fact of any corrupt or illegal practice or that they had any corrupt or dishonest motive in not including the omitted items in their returns. This was a two-member constituency and each candidate could incur election expenses to the extent of 12,000/-, whereas the total expenditure shown in the return of the respondent No. 1 is Rs. 4,413/9/9 only and that in the return of respondent no. 2 is Rs. 2,531/11/9 only, and so the items in question could have very well been included in the returns without exceeding the prescribed maximum; none of these items have any connection with any corrupt or illegal practice and consequently there could be no question of any corrupt or dishonest motive on the part of the respondents in not including these items in their returns. In these circumstances we are not satisfied that the omission of the items in question from the returns makes the returns false in material particulars or constitutes any corrupt practice as the omission may have been due to an honest mistake of fact or law only, which would mean that the returns are not false at all in any material particulars. This should be sufficient to dispose of these issues, but we propose to deal briefly with each item individually also. The contention of the respondents is that some of these items were not incurred at all and the others were not their expenses on account of, or in connection with, or incidental to the election and as such they were not required to be shown in their returns. Their contention further is that the omission, if any, did not affect the result of the election at all, and we are satisfied it did not.

43. Para. 8(a) of the petition says that the expenses incurred by the respondents for the purchase of the electoral rolls have not been included. The contention of the respondents is that they did not purchase any electoral rolls for the election. The petitioner has not given any evidence to prove that any electoral rolls were purchased by or on behalf of the respondents and the respondents themselves have stated on oath that no electoral rolls were purchased by them or on their behalf, and we find, therefore, that no such expenditure was incurred. Para. 8(b) says that the charges incurred on the making of copies of the electoral rolls and on the filling in of the voters' cards have not been included; on behalf of the petitioner there is no evidence that the respondents got any copies made of the electoral rolls and the contention and evidence of the respondents is that they did not get any such copies prepared and we believe the respondents on this point. As far as the charges of the filling in of the voters' cards are concerned, the respondents have admitted that such charges were incurred but not included in the returns, there were about 1,50,000 electors in the constituency and as many cards must, therefore, have been prepared for them, and the cost of the filling in of the cards would come to not more than Rs. 400/- at the rate of -/4/- per one hundred cards; there were four candidates on the Congress ticket from this area, viz. two for the Legislative Assembly and two for the House of the People, and this expenditure would be shared by all of them equally; on this basis each of the respondents No. 1 and 2 should have included a sum of Rs. 100/- on this account in his return.

44. Para. 8(c) says that the expenditure incurred by the Congress Committees and Congress Parliamentary Boards towards the furtherance of the prospects of the election of the respondents No. 1 and 2 has not been included. This objection of the petitioner is confined only to the election literature issued by the Congress

and is not about any other item of expense. This literature comprises of the posters Exs. P6 to P13, P16, P23, P25 to P28 and P47, leaflets Exs. P14, P24 and P31 and pamphlets Ex. P46, P48 and P49. The contention of the respondents is that most of this literature was not used at all in this constituency but the petitioner has proved by satisfactory evidence that all this literature was used. The contention of the respondents in the alternative is that this literature was issued by the Congress in propagation of its general policy and programme and not particularly for the election of the respondents no. 1 and 2 and this may be true, but all the same this literature was issued in the election days for the purposes of the election and for the benefit of the candidates standing on the Congress ticket, including the respondents no. 1 and 2; the candidates for whose benefit this literature was issued comprised of those for the House of the People and of those for the State Assembly, and these candidates were not confined to this constituency, or this district or this State only but were spread all over India, but there is no reason why the proportionate cost of such copies of this literature as were used in this constituency for the benefit of the respondents no. 1 and 2 should not have been included in their returns, when the Congress organisation, that had issued this literature, had set up these respondents as its candidates and was working for them in the election and was, therefore, their agent for the purposes of this election. The parties have given no evidence as to the amount of the cost, but we think that in the case of each of the two respondents the proportionate cost should not come to more than a few hundred rupees, and also according to the further and better particulars given by the petitioner the cost is about Rs. 650/- for each of the respondents no. 1 and 2. In our opinion this item of expenditure should have been shown in the returns, and an equivalent amount should have been shown under the head of receipts as having been received from the Congress organisation.

45. Para. 8(d) is about the touring expenses of Sri Bansi Dhar Misra and Sri Shri Ram Gupta, Congress leaders of the District, in connection with this election and para. 8(e) is about the expenditure of the correspondence carried by Sri Bansidhar Misra about this election, and the petitioner has at the time of arguments given up his case in respect of these items. The objection taken in para. 8(f) is that in this election a number of cars were in use but the value of their services have not been shown in the returns of the respondents no. 1 and 2; the respondents admit that a car of the District Congress Committee and another of Sri Shivendra Bahadur Singh were used on their behalf in this election and the petitioner has, therefore, confined his case to these two cars only. The case of the respondents is that in their returns they have shown alright the price of petrol consumed by these cars for this election as well as the salary of their drivers and the petitioner does not challenge this fact, but his objection is that the money equivalent of the services of these cars should also have been shown in the returns under the head of Receipts as so much money received from the owners of the cars and under the head of Expenses as so much money spent. The respondents contend that even if it were necessary for them to show this money equivalent in their returns there would be great difficulty in determining the amount of this equivalent. We think that the money equivalent of the services of these cars should have been shown in the returns and the difficulty in determining this equivalent should not have been unsurmountable. In our opinion this money equivalent should not have been more than a few hundred rupees.

46. Para. 8(g) of the petition says that the expenditure or the purchase of the forms of the returns of election expenses and the stamps for the declarations verifying the returns should have been included in the returns but has not been so included. The contention of the respondents is that this was not at all an expenditure for the conduct or management of the election within the meaning of rule 111 of the rules of 1951 framed for the conduct of Elections and Election Petitions and as such it was not required to be included in the returns. We are doubtful if this expense was really required to be included in the returns, and in any case it was only Rs. 5/- for each of the two respondents. The grievance in para. 8(h) of the petition is that the amount of security deposited by the respondents no. 1 and 2 under Section 34 of the Representation of the People Act, 1951 has not been included in the returns. This amount in the case of respondent no. 1 was Rs. 250/- and in the case of respondent no. 2 Rs. 125/-, and the reply of the respondents is that on the declaration of the result of the election it became certain that the amount would be returned to them and so it was not at all necessary for them to include it in their returns. We accept this contention of the respondents.

47. The grievance in para. 8(i) is that an election meeting of the respondents no. 1 and 2 was held at Pandaria Tula on 6th December, 1951 on the occasion of the fair there and was attended by the respondent no. 1, Sri Shri Ram Gupta and

others but its expenses have not been shown in the returns of the respondents no. 1 and 2. The fact of the holding of this meeting is admitted by the respondents but their contention is that no expenses at all were incurred on this meeting as one Mohan Lal of village Piparia Dhani, R.W. 58, had set up his Shamiana in the fair as he does every year and he lent the use of this Shamiana for the holding of the meeting and no other expenses were required to be incurred; this Mohan Lal himself says that he had to incur no expenditure on this Shamiana as the Shamiana was his own and not a hired one and he took it to the fair in his own cart and set it up there himself. On behalf of the petitioner there is no evidence to the contrary but even then we think that the money equivalent of the use of this Shamiana should have been shown in the returns though it could not have been more than a few rupees.

48. Para. 8(j) has been ordered to be deleted and para. 8(k) says that when applying for the Congress tickets for the election the respondent no. 1 paid Rs. 100/- and the respondent no. 2 Rs. 50/- to the U. P. Congress Parliamentary Board and they should have included these amounts in their returns which they have not done. The explanation of the respondents for this omission is that at the time of paying these amounts they were not candidates at all within the meaning of Representation of the People Act, 1951 and as such the expense was not an expense in connection with the election and was not required to be shown in the returns. However, Section 79(b) of the Act defines the word "candidate" and lays down that a person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate, and applying this test in this case we are of the opinion that by applying for the Congress tickets the respondents began to hold themselves out as prospective candidates and as such the amounts paid by them with their applications to the U. P. Congress Parliamentary Board were expenses in connection with the election and should have been shown in the returns.

49. In para. 8(l) the objection taken is that the respondents No. 1 and 2 have not shown in their returns the expenses of their trip to New Delhi taken in November 1951 in order to press their case for the Congress tickets before the All India Parliamentary Board and in Para 8(m) the objection taken is that the respondents came to Lakhimpur Kheri and stayed there from 22nd November, 1951 to 30th November, 1951 for filing their nominations for this election but have not shown the expenses thereof in their returns. The respondents admit their Delhi trip but contend that the expenditure thereon was not for the conduct or management of the election and as such it was not required to be shown in their returns; in their statements on oath they have stated also that all these expenses were met by Sri Bansidhar Misra who went with them and so they were not included in the returns. They also admit having stayed at Lakhimpur Kheri from 22nd November, 1951 to 30th November, 1951 as alleged but contend that they put up with Pt. Bansidhar Misra who met all these expenses and they themselves had not to pay any thing. Even if Sri Bansidhar Misra met the expenses of their Delhi trip or their Lakhimpur stay, then too we think that the respondents should have shown these expenses in their returns on the expenditure side and should have shown their money equivalent on the receipt side as having been received from Sri Bansidhar Misra. However, all this expenditure should not come to more than Rs. 50/- or Rs. 100/- in case of each of the two respondents.

50. Para. 8(n) (o) and (p) has been ordered to be deleted on the ground of vagueness and indefiniteness, while para. 8(q) of the petition has been given up by the petitioner at the time of arguments. Similarly para. 8(r) has been ordered to be deleted and this brings us to para. 8(s) in which the allegation is that the respondent no. 2 opened a Congress election office at Dhaurara but in his return he has not shown the rent paid for it. The answer of the respondents is that no rent was shown because none was paid. Their explanation is that prior to the election in question the respondent was the Supervisor Qanoongo in this area and used to live in a house at Dhaurara free of rent as his predecessors used to do; this house belongs to Barma Din R.W. 9, who is the brother of Chhail Behari Lal of Amethi R.W. 19, and although the respondent no. 2 resigned from the Government service for the purposes of this election, yet he was allowed to continue in this house free of rent in the election days also; it was in a portion of this house that the respondents No. 1 and 2 had their election office and this accounts for the fact that no rent was paid for this office and none was included in the returns of the election expenses. The petitioner has not adduced any evidence to show that any rent was actually paid while the evidence of the respondents shows that none was paid and in these circumstances we think that there was nothing improper on the part of the respondents in not including in their returns any rent of their Dhaurara office. para 8(t) has been given up by the petitioner at the time of arguments while para. 8(u) has been ordered to be deleted and this disposes of para. 8 of the petition.

51. We now take up para. 7(xv) of the petition which is in respect of some publications of the Information Department of the U. P. Government and the petitioner's allegation is that these publications were distributed broadcast in the constituency by the two respondents and their workers and agents to further the prospects of their election and his contention is that their cost should have been shown in the returns of the election expenses of the respondents. The respondents admit that the Information Department of the U. P. Government did issue these publications but contend that this literature had nothing to do with the election and was issued by the Information Department of the Government only to educate the public opinion as regards the work being done by the Government; according to them very few copies of these pamphlets were distributed in the constituency in question and the distribution was not at all by them or by their agents or workers and had no connection with their election; they add that the contents of these pamphlets were of such a nature as not to have the slightest effect upon the election and they did not amount at all to any election propaganda for the Congress candidates. Some of the publications issued by the Information Department in the election days are on the record as Exs. P4, P5, P15 to P17, P19 to P22, P37 and P38, although Exs. P15 to P17, Ex. P20 to P22 and P38 do not find a mention in para. 7(xv). The agents and workers who may have distributed these pamphlets have not been named in the petition and so we are left with the distribution by the respondents no. 1 and 2 only, if at all. The petitioner has examined P.W. 23 Jagmohan Lal, P.W. 34 Brij Kishore, P.W. 35 Madan Lal, P.W. 37 Chhama Shankar, P.W. 38 Baij Nath, P.W. 39 Shankar Lal, and P.W. 82 Sheo Govind to prove that copies of Ex.P4, P5, P15, P16, P17, P19, P20, P21, P22, P37 and P38 were distributed by the respondents no. 1 and 2 or were got distributed by them; most of these witnesses belong to Palia and depose about the distribution at Palia only. On the other hand the respondents no. 1 and 2 and their witnesses have come forward to say that there was no such distribution at all, and we see no good ground to believe the petitioner's evidence on this point in preference to the respondent's evidence.

52. Copies of these pamphlets may have been distributed or circulated in the constituency in the election days, but they had nothing to do with the election or with the Congress candidates at the election; these pamphlets appear to have been issued by the Information Department in the course of performance of its normal function to bring to the notice of the public what the Government was doing for its benefit after the attainment of independence, so that the public might make full use of these beneficial activities of the Government for the purposes of national development and progress, specially as the National Development Plan was also coming to a head these days in its concrete and practical shape, and it appears to have been a mere accident that the issue of this literature synchronized with the general elections of 1951-52. The circular letters of the Information Department Ex.P52 to P55 show that this literature could be availed of by all the political parties of the country and not by the Congress alone; even non-political institutions of a public nature could avail themselves of these publications, and in fact any individual who desired to avail of these publications could get them irrespective of his political affiliations, and so the responsibility for any circulation of these publications could not be fastened upon the respondents no. 1 and 2. In these publications there was no reference to the election nor was the Government referred to at all as the Congress Government and all reference to the election and party politics was scrupulously avoided. These publications were to be had free of any charge and so there was no question of making any payment for them or of accounting for any such payment. We are not satisfied that the publications in question were of such a nature as would have furthered the prospects of the election of the respondents no. 1 and 2 or that the respondents made any use of them in their election, and we think that the respondents had nothing to show on this account in their returns. Our finding on issues no. 6 and 7, therefore, is that the returns of the election expenses of the respondents no. 1 and 2 have not been proved to be false in any material particulars and that the corrupt practice defined in Section 124(4) of the Act has not been established.

53. *Issue No. 3(a).*—It is alleged in paragraph 7(i) of the petition that the respondent no. 1 (Sri Karan Singh) was at the time of nomination disqualified to stand as a candidate under Section 7(d) of the Representation of the People Act, 1951 as he, along with others, was holding certain plots of land under the terms and conditions of the U. P. Land Utilization Act (U. P. Act V of 1948) and as such had a share and interest in a contract for the supply of goods to the U. P. Government.

Reply of the respondent no. 1 is contained in paragraphs 7(i) and 16 of his **written statement**. He denied having been disqualified under Section 7(d) of the Representation of the People Act, 1951 on the ground that he was holding certain



plots of land under the U.P. Land Utilization Act. He admitted that he took land along with others under the aforesaid Act but pleaded that he had not paid anything in cash or in kind to the Government so far and that he had no share or interest in any contract for the supply of goods to the Government.

It is not proved from the side of the petitioner that the land taken by the respondent No. 1 was ever brought under cultivation by him nor is it proved that any demand for half of the produce as envisaged in Section 4 of the U.P. Land Utilization Act was ever made by the Deputy Commissioner. In fact no evidence was produced from the side of the petitioner on this point except some documents which have all been admitted by the respondent. These documents are as follows:—

Papers Exs. P144 and P146 are copies of two applications made by Sri Karan Singh (respondent No. 1) and others to the Deputy Commissioner, Kheri in which certain areas of uncultivated lands were pointed out and request was made for giving those lands for cultivation to the applicants. Application Ex. P144 is dated September 29, 1950 and is in respect of lands of village Khamaria and the application Ex. P146 is dated October 7, 1950 and is in respect of lands of village Bailaha. Copy of the order made on the former application is not on the record. There is, however, copy of an order dated September 3, 1951 Ex. P145 on the record which shows that out of the land in respect of which the application was made only on area of 100 acres was given to the applicants. Paper Ex. P147 is copy of the order dated March 7, 1951 made on the second application. An examination of the two orders copies of which are on the record shows that the landlords, when served with the notice of the Deputy Commissioner under the provisions of the Land Utilization Act, appeared and opposed the applications. They—there were two different zamindars—attempted to set up tenants under *farzi pattas* and also attempted to prove that part of land was under their own cultivation. However, ultimately the area of land was reduced in one case and in the other case matter was compromised and some land was allotted to the applicants. The last paper filed from the side of the petitioner is Ex. P151 which is copy of a *qabuliat* executed by Karan Singh and others in respect of the land of village Khamaria but it was executed after the election in question. It is dated April 24, 1952 and the following passage from that paper was relied upon by the petitioner:

“we shall on demand by the Deputy Commissioner give half of the produce to the Provincial Government at such rate as may be fixed by the Government. If we do not cultivate the land we may be prosecuted under the Act.”

From the side of the respondent there is his statement on oath made as R.W.85. He admitted having taken the land but stated that he did not bring under cultivation his share of the land which had been separated by partition, that no demand for half of the produce was ever made by the Deputy Commissioner and that he did not at all deliver any produce in answer to any such demand. He added that sometime in the year 1954 he made a gift of his share of the land to Sri Vinoba Bhawe. These assertions of the respondent were not challenged during cross-examination.

54. Thus the story that emerges from the admitted or proved facts is that Sri Karan Singh and others brought it to the notice of the Deputy Commissioner that certain lands were lying un-utilized. They did so by making two applications Ex. P144 and P146 in which they also wanted the lands for themselves. The Deputy Commissioner issued notices according to law and the landlord in each case contested the notice so much so that *farzi pattas* (leases) were set up. Ultimately some of the land was allotted to Sri Karan Singh and others. Sri Karan Singh got his share of the land separated from the share of other partners. He never cultivated the land of his share. The Deputy Commissioner never made any demand for half of the produce and never was any such demand complied with. Now Sri Karan Singh has made a gift of his land to Sri Vinoba Bhawe. We are, however, not concerned in this case either with the aforesaid gift or with the above-mentioned *Qabuliat* which was executed long after the relevant period and which simply repeats the provisions of law contained in the U.P. Land Utilization Act. It is obvious that mention of those provisions in the *Qabuliat* does not make them more binding on the executants of that document. It is clear from the facts given above that the only act for which Sri Karan Singh can be held responsible is that he was one of the parties to the two applications mentioned above which, when read in the context of the provisions of Section 3 of the Land Utilization Act, convey information to the Deputy Commissioner that the lands mentioned in the applications can be utilized for cultivation. No doubt the applications contain a prayer that the lands may be given to the applicants for cultivation but

there were good many hurdles in the way of getting the lands. The landlord might himself cultivate the land; he might as well let it out to a tenant; the Deputy Commissioner might cultivate the land for the Government. If none of these acts was done the request of the applicants might be considered. It might be turned down or it might be granted.

The simple facts given above do not require any discussion in any detail. The only question is if these facts attract the provisions of Section 7(d) of the Representation of the People Act, 1951 which, so far as is relevant for our purpose, lays down that a person shall be disqualified for being chosen a member of the Legislative Assembly if he has any share or interest in a contract for the supply of goods to the Uttar Pradesh Government.

Contention of the petitioner's learned counsel was that the two applications noticed above contain the offer by Sri Karan Singh and the two orders of the Deputy Commissioner amount to acceptance. Thus, according to him the contract was complete for supply of half the produce to the Government whenever the demand is made by the latter and this contract brought Sri Karan Singh within the mischief of Section 7(d).

Contention of the respondents' learned counsel was that there was no contract at all and that half the produce of land was to be supplied because of the obligation created under the statute.

55. After very careful examination of the relevant provisions of law our conclusion is that there is complete absence of any contract for the supply of grain to the Government and, therefore, we are definite that the respondent No. 1 is not hit by Section 7(d) of the Representation of the People Act.

For a detailed consideration of this point the provisions of the Land Utilization Act are to be closely examined. Before doing so history of this legislation may be given. During and after the II World War the economy of every country including India was deeply affected particularly in relation to the foodstuff. More foodstuff was necessary for the growing population and hoarding of the grain was also to be checked. Legislations on all India basis such as the Essential Supplies Act etc. were brought on the statute book. Each province (now State) began to legislate on the same lines. In our State two lines of action were adopted. On the one hand the Government took it upon itself to compulsorily purchase grain from surplus areas and to supply the same to the deficit areas. This step was taken in order to check hoarding and black-marketing. On the other hand the Government passed laws for the purpose of utilizing uncultivated lands with a view to increasing production of foodstuffs. In the year 1947 the U.P. Act X of 1947 was passed by which certain amendments were made in the U.P. Tenancy Act, 1939. The purpose of this enactment was, *inter alia*, 'to provide for better utilization of land'. By this amending enactment a new Section 126A was added which was the fore-runner of the Land Utilization Act. By this provision, in case of emergency, certain rights of the landlords in relation to the management of their lands were taken away and power was conferred on the Deputy Commissioner to exercise those rights on behalf of or as a statutory agent of the landlord. He was empowered to declare state of emergency and then take steps for the utilization of certain class of land for the purpose of growing food-grains. This Act came into force in the middle of the year 1947. However, it appears that the provisions of the new Section (Section 126A) were discovered to be not sufficiently effective. In September of that year the U.P. Land Utilization Ordinance IX of 1947 was promulgated. The preamble of the Ordinance runs thus:

'whereas due to acute shortage of food it is expedient to provide immediately for powers to utilize uncultivated land with a view to increasing the production of foodstuff.'

Use of the word 'powers' in the preamble which we have italicized is important and significant. It indicates absence of contract as also the absence of volition on the part of one of the parties concerned. This Ordinance was followed by the U.P. Land Utilization Act V of 1948 which came into force in February of that year and wording of this legislation is exactly the same as that of the Ordinance including the preamble which runs thus:—

"whereas it is expedient to provide for powers to utilize un-cultivated land with a view to increasing the production of foodstuffs."

This Act remained in force for several years till at last it was repealed by Act XVI of 1953 which was passed for incorporating certain amendments in the Zamin-dari Abolition Act. The question of the repeal of the Act, as we shall presently show, will have bearing on the existence or otherwise of a contract to supply goods to the Government.

Section 3 of the said Act provides that the Collector or the Deputy Commissioner may, *suo motu* or on getting information, call upon the landlord of any land in the district to let out such land or pre-arrange for the cultivation thereof within prescribed period, that if the landlord shows to the satisfaction of the Deputy Commissioner that the land is not capable of being cultivated or that it is already being cultivated by the landlord himself or has been let out for cultivation, the Deputy Commissioner shall cancel the notice and that if the landlord does not turn up in answer to notice or the Deputy Commissioner does not cancel the notice, the Deputy Commissioner may either get such land cultivated on behalf of the Provincial Government in which case he is to pay rent to the landlord or let it out to a tenant in which case, again, the tenant is to pay rent to the landlord.

56. In the present case the Deputy Commissioner proceeded to exercise his powers under the said Act on getting information about the land from the two applications of Sri Karan Singh and others mentioned above. Those applications cannot be construed to contain any offer for the supply of grain to the Government. The same must be deemed to convey information to the Deputy Commissioner to the effect that the Deputy Commissioner may exercise the powers conferred on him under the Act. In answer to the notice of the Deputy Commissioner the landlords turned up and wanted to show that the lands had already been let out but the Deputy Commissioner found that the leases were fictitiously executed and ultimately he decided to let out the lands to Sri Karan Singh and others who had conveyed information to the Deputy Commissioner as pointed out above. It may be noted that so far no question of any contract for the supply of goods (grain) to the Government arises. The un-utilized land has been utilized and the object for which the Act was passed has been achieved.

Form of the notice which is issued by the Deputy Commissioner to the landlord under Section 3(1) is given in the Schedule attached to the Act. Relevant part of it is as follows:—

"In exercise of the powers conferred by Section 3 of the U.P. Land Utilization Act, I the Collector of ... District hereby call upon you to let out the land specified below within 15 days from the date of service of this notice."

It is important to note that the notice makes no reference to the purchase of half of the produce by the Government. It is true that the Rules framed by the Government under this Act provide that the leases and the counter-parts thereof should be in the form given in the third schedule of the U.P. Tenancy Act with suitable modification to cover cases governed by Section 4 of the Act, but reference to the purchase of grain is redundant. The tenant or even the landlord who cultivates that land is bound to sell the grain under the statutory provisions to be mentioned presently. Probably the mention of purchase of grain in the rule is made only with a view to bring this fact prominently to the notice of the person cultivating the land.

57. So far the position is this that the Government thought it expedient to provide for increase in the production of foodstuff. It was found that this object could be achieved also by bringing uncultivated lands under cultivation. All lands belonged to the landlords who had the right to cultivate the land, to let it out for cultivation or to let it lie uncultivated. These rights of the landlords were taken away by the Government by legislation. The Collectors were empowered to exercise those rights on behalf of the landlords. Under the law they became statutory agents of the landlords for special purpose. They manage the land, no doubt, for the purpose of cultivation but they do so as agents of the landlords.

This brings us to Section 4 of the Act which is as follows:—

"4. Sale of grain to the Provincial Government—Where any land is brought under cultivation in accordance with the provisions of this Act, the landlord or the tenant cultivating such land shall, on demand by the Collector, sell to the Provincial Government one half of the grain produced over such land at such rate as may be fixed by the Provincial Government from time to time."

It is to be noted that there is no reference to any contract in this Section. We have italicised certain words occurring in Section 4. The word 'sale' has been used in the heading of the Section which does not refer or point out to any contractual obligation. Again, the use of words 'is brought under cultivation' clearly shows that the obligation is to play its part only when the land is actually cultivated. And again the landlord is bracketted with tenant although it cannot

be said by any stretch of reasoning that he is under any contractual obligation to sell the grain to the Provincial Government. Even if the contention of the petitioner regarding offer and acceptance mentioned above be accepted, there is no offer by the landlord and no acceptance by the Deputy Commissioner. Still, as provided in Section 4 of the Act, the landlord is bound to sell half of the produce if the land is brought under cultivation by him and the demand is made by the Deputy Commissioner. Obviously it is the statutory obligation under which the landlord is bound to sell the grain. If this is so, it cannot be argued that in case of the landlord the obligation is statutory whereas in case of Sri Karan Singh and others it is contractual. Two divergent conclusions cannot be arrived at from the same provision of law i.e., from Section 4 of the Act. In fact the obligation is statutory in both the cases.

58. The U.P. Government promulgated an Order contained in notification No. B.1612/XXIX-A dated March 14, 1946 published in the Gazette Extraordinary of even date by which compulsory procurement of grain was ordered. This order was issued under Sub-rule 2 of the Defence of India Rules. Though the Land Utilization Act was meant, as appears from the preamble, for the utilization of uncultivated land with a view to increasing production of foodstuffs, Section 4 was inserted in the Act for the purpose of procurement of grain. The whole scheme of procurement is based on statutory compulsion. Consent, volition, agreement or contract play no part in this scheme, nor can an agreement or contract be spelt out of the said scheme. The Collector or the Deputy Commissioner, under the Land Utilization Act, acts in two capacities. As statutory agent of the landlord he manages the uncultivated land under Section 3 of the Act for specific purpose and for definite period and, in that capacity, he has the discretion of letting out the land to any suitable person. This done his function as agent of the landlord comes to an end and the old relations of landlord and tenant, which had been taken away by the statute from the landlord for special purpose of utilization of uncultivated land, revive again. Under Section 4 of the Act, the Collector or the Deputy Commissioner acts not as statutory agent of the landlord but as executive functionary of the Government. He is empowered to demand by way of purchase half of the produce if the land is actually brought under cultivation; and if the demand is not complied with, the defaulter will be prosecuted criminally under Section 7 of the Act. The compulsory sale and purchase, under Section 4 of the Act, is akin to the payment of ordinary income tax or agricultural income tax or any other dues payment of which is provided statutorily. It is perhaps because of economy of time and space that the provisions of Section 4 have been inserted in this Act. As a matter of fact utilization of land has nothing to do with the procurement of grain. There should have been a separate enactment on this point. However, its inclusion in the Act cannot, and in our view does not, give the provision the meaning which was not intended by the legislature.

59. There are certain tests which, when applied to the provisions of the Act, clearly show hollowness of the contention put forth from the side of the petitioner. One test is that if the provisions of Section 4 had been contained in a separate enactment, the same would have been applicable with equal force to all those cultivating the land under Section 3 of the Act, although even the supposed contractual obligation would have been absent. The position would have been similar to the payment of agricultural income tax and other similar taxes. Those taxes are paid not because of any express or implied contractual obligation but by virtue of operation of law. Inclusion in the Act of the provisions contained in Section 4 does not change the position. The land was certainly let out to Sri Karan Singh and others under a contract but the compulsory sale of grain when demand is made is a statutory obligation which has nothing to do with that contract. Another test is that even the landlord cultivating the land would be liable under Section 4 to sell half of the produce though there is no offer from his side and no acceptance from the side of the Deputy Commissioner even according to the argument advanced from the side of the petitioner. A third test is that after the repeal of the Land Utilization Act it is obvious that the provisions of compulsory sale cannot be brought into effect. If there was a contract or agreement the same would have been enforceable even after the repeal of the Act. There is yet another test. It may be noted that the provisions of Section 3 of the Act are prefaced with the phrase 'notwithstanding anything contained in the U.P. Tenancy Act 1939 or in any other enactment for the time being in force.' It is clear that the Collector is empowered to let out the land in spite of any law to the contrary. But the provisions of Section 4 are not prefaced with any such phrase. Therefore, if it be assumed that the demand under Section 4 was based on any contract, the same shall be in conflict with Sections 4 and 128 of the U.P. Tenancy Act, 1939.

60. We have given our best consideration to the whole matter and we have closely examined the relevant provisions of law. Our conclusion is that there is complete absence of volition and mutuality. The provision of compulsory sale of half of the produce is not at all based on any agreement or contract express or implied. It is statutory obligation created by operation of Law. There being complete absence of contract to supply goods to the Government, provisions of Section 7(d) of the Representation of the People Act do not come into play and the respondent No. 1 is not disqualified on that account.

In support of the view that we have taken we may cite a decision of the Patiala Tribunal in the Case—Benarsi Dass Vs. Lekh Ram and others (Election Petition No. 6 of 1952) reported as 2 ELR 136 at 145. In that case it was held that a lease of Government quarry for the extraction of ore does not amount to a contract for supply of goods to the Government within the meaning of Section 7(d) of the Representation of the People Act, 1951 even though it contains a term that if the Government requires any quantity of stone or sand, the contractor will not refuse to sell the same to the Government at the current price.

In another case—Election Petition No. 2 of 1952—Harne Jones Vs. Mohan Singh and others reported as 2 ELR 147 it was held that a 'contract for the supply of goods' in Section 7(d) means a contract of an abiding and subsisting character and is not extended to cover casual supplies of goods.

A case of the Faizabad Tribunal of which two of us three were members is on all fours with the present case. It is the case of Bhola Nath Vs. Krishna Chandra Gupta reported as 6 ELR 104. In that case also the petitioner had alleged that the returned candidate was disqualified under Section 7(d) of the Act because he, having taken land under Section 3 of the U.P. Land Utilization Act, had contracted to supply grain to the Government under Section 4 of the said Act. It was held that there was no contract at all for the supply of grain to the Government and that the obligation to sell grain on demand envisaged in Section 4 of the Act was a statutory obligation not based on any contractual undertaking. In that case the word 'contract' given in Section 7(d) was given a restricted meaning. After the recent decision of the Hon'ble Supreme Court that is no longer good law. That point, however, does not affect the main reasoning of the Tribunal about complete absence of contract.

From the side of the petitioner several cases were cited which are dealt with and relied upon in the dissenting order of Sri Sanyal the Advocate Member. If we proceed to discuss each one of those cases, this order will be inordinately lengthened. The common feature of those cases is that there was agreement or contract in each case which gave rise to the matter in controversy whereas in the case before us there was no contract at all.

Therefore, for the reasons given above we decide the issue for the respondent No. 1 and against the petitioner.

61. *Issue No. 3(b).*—In view of our finding on issue No. 3(a) that the respondent No. 1 did not suffer from any disqualification under Section 7(d) of the Act the question of declaring the election void on any such ground does not arise at all and this disposes of issue No. 3.

62. *Issue No. 9.*—As discussed above our finding in this case is that the respondent No. 1 did not suffer from any disqualification under Section 7(d) of the Representation of the People Act, 1951, nor has the petitioner succeeded in proving any corrupt practice, whether major or minor, or in proving any irregularity materially affecting the result of the election. Thus in our opinion there is no ground at all for declaring the election of any of the respondents No. 1 and 2 to be void, and we would dismiss the election petition with costs to the respondents No. 1 and 2, which costs we would assess at Rs. 500/- only.

(Sd.) M. U. FARUQI, *Judicial Member.*

(Sd.) R. SARAN, *Chairman.*

19th May, 1955.

PER A. SANYAL:

In my order I propose to confine my observations to such matters only in which I differ from my learned colleagues.

*Issue No. 4.*—This issue is a comprehensive one and consists of a large number of corrupt and illegal practices alleged to have been committed by the respondents and is detailed in para. 7 of the petition. I shall deal with these corrupt

practices one by one and I shall confine my judgment only to such corrupt practices regarding which there is a difference of opinion between myself and my learned colleagues. I shall take up the case of bribery first. The allegation about it is contained in paragraphs 7(ii) (c) of the petition. The charge is levelled against two persons, Ambika Prasad and Khotan Lal. The charge against Ambika Prasad was abandoned and it is now confined only to the charge against Khotan Lal. The allegation in the petition is in these words: "That the respondents No. 1 and 2 themselves committed the corrupt practice of bribery by offering and paying a sum of Rs. 100/- each to electors Nos. 797 and 936 of village Banbirpur on or about 16th January 1952. No. 936 is Khotan Lal son of Ram Lal of Banbirpur. The charge of course is denied. The petitioner has supported his case by examining several witnesses including P.W. 103 Suraj Prasad of Lalapur, P.W.104 Chhatrapal and P.W.105 Sankta Prasad. The other witnesses are not so important in order to decide the question of bribery. According to the evidence produced by the petitioner it appears that Khotan Lal wrote a letter on 18th January, 1952 to Suraj Prasad of Lalapur informing him that Sri Karan Singh respondent No. 1 had given him Rs. 100/- and has promised to pay more in case of success and Khotan Lal has asked Suraj Prasad not to miss this opportunity and take the money from Karan Singh and to work for him and the Congress. There is no doubt now that this letter was actually written by Khotan Lal and sent to Suraj Prasad who produced this letter in Court as P.W.103 on 11th January 1954. From the evidence produced by the petition his case is that this letter was taken to Suraj Prasad at Lalapur by one Chhatrapal P.W.104 and was delivered to Suraj Prasad in the presence of one Sankta Prasad and this man has also been examined in this case as P.W.105. If these witnesses are believed then there is no doubt that Sri Karan Singh paid Rs. 100/- to Khotan Lal before 18th January 1952 and there is the further evidence that Khotan Lal met Suraj Prasad in the Kusaha market the following day and said to him that he had received a sum of Rs. 100/- and asked Suraj Prasad to accept also the money from Sri Karan Singh and work for him and the Congress. It is now alleged by the respondents that this letter was brought into existence with the help of Khotan Lal some 5 months after the polling and for the purposes of the petition. Curiously enough this case was not put to Suraj Prasad or the petitioner when they were in the witness box. It was about 10 months after this that the respondents began their evidence and in the beginning an attempt was made to show that this letter Ex. P40 was not in the handwriting of Khotan Lal but when that position was no tenable they put these suggestions through their witnesses at a very late stage of their evidence. In these circumstances, this case now stated by the witnesses of the respondents, is an after-thought and is not worthy of belief, and I am unable to accept it. The other argument has been made on behalf of the respondents by referring to one Ex. P36. It is a leaflet issued by the Congress party and in which the name of Khotan Lal appears as one of the signatories, and it is further admitted by the petitioner that he saw this leaflet about four weeks before the polling day, and the argument is built by the respondents that this is a conclusive proof that Khotan Lal was a worker of the Congress about 4 weeks before the election and, therefore, there is no need to give him the bribe about the 15th of January 1952. This argument assumes that Khotan Lal was signatory to Ex. P36 but there is no evidence about it on the record. The next point is that it may be that Khotan Lal's name was put in by somebody in the leaflet because he was supposed to be a sympathiser of the Congress, but it does not mean that he was working for Congress. It may further be that the petitioner knowing that Khotan Lal was working for him did not bother about it and it was only when the Congress party discovered that Khotan Lal was working not for the Congress but for the petitioner, they felt it necessary that he should be won over and it was for this reason that on or about 16th January this payment had to be made to him and there is nothing surprising or unusual about it. I failed to mention that leaflet Ex. P36 contains among its signatories at least three names of persons who are not Congress workers. On the whole I am of the opinion that the evidence of the petitioner's witnesses backed by this document Ex. P40 is sufficient to prove the payment of bribe to Khotan Lal to obtain his vote and to get his support in the election. There is another important fact which may be kept in mind; that Khotan is a Brahmin and so is Suraj Prasad of Lalapur and it appears from the evidence of Suraj Prasad that village Lalapur is populated mostly by Kurmis and he is the only Brahmin in that village and acts as Purohit of the Kurmis. It thus appears that he was a man of influence. Further he is Sarpanch of the Panchayati Adalat of Lalapur. A very important factor to be considered in this case is that Khotan Lal, the most important person, who could explain things has not been produced by the parties. Each party says that he has been won over by the other party. The petitioner's case is that after being won over on or about 16th January, 1952 Khotan Lal became the polling agent of the respondents and it may be taken that on the polling day he was a worker of the Congress. It was for the respondents to produce him in order to explain the letter Ex. P40 which, on the face of

it, is a letter written by Khotan Lal on 18th January 1952 and was sent to Suraj Prasad by an illiterate and innocent messenger, Chhatrapal. On behalf of the respondents of course there is denial and the respondents' witnesses say generally that Khotan Lal was a Congress worker. I have already dealt with that question namely that Khotan Lal might have given them the impression that he was Congress worker whereas actually he worked for the petitioner which necessitated the giving of the bribe. I shall not discuss the matter any further and I am of the opinion that respondent No. 1 Sri Karan Singh did pay Rs. 100/- to Khotan Lal to obtain his vote and his support in the election and he is guilty of the major corrupt practice of bribery as defined in Section 123(1) of the Representation of the People Act.

2. I shall now deal with the major corrupt practice of obtaining assistance from persons serving under the Government as defined in Section 183(8) of the Act. I shall not deal with all the Government servants named in the petition but with only a few.

The first person is Sri Yag Datt Awasthi Panchayat Raj Inspector, Dhaurara and the allegation about him is contained in paragraph 7(iii) (c) of the petition. It is said that this Government servant canvassed for respondents No. 1 and 2 in their knowledge and with their connivance. He went to village Abhaipur on 20th January, 1953 and canvassed support for the Congress candidates. On 21st January, 1953 he canvassed support in the Ramiabehar market. It is further alleged that when these activities of Sri Yag Datt Awasthi came to the knowledge of the authorities Sri Yag Datt Awasthi who had been appointed the Presiding Officer at the Taliyar polling station was removed from that office and Sri Rampal Singh was appointed to act as such. The respondents do not admit that Sri Yag Datt did any canvassing for them in this election. Before I come to assess the value of the oral evidence on this point produced by the parties it is necessary to take into consideration the background of this Sri Yag Datt Awasthi. It is admitted that he was a paid clerk in the office of the District Congress Committee, Lakhimpur Kheri, before he was appointed the Panchayat Raj Inspector about year 1949 and also we have on the record a letter Ex. P75 dated 3-5-53 from the office of the D.C.C. addressed to Sri Awasthi reminding him that certain forms of the Congress had remained with him for a long time and asking him to return them after getting them duly filled up by the public. The genuineness of this letter is admitted by the counsel of the respondents and it is now sought to be argued that it was sent not to this Awasthi but to another person of the same name. I am unable to accept this argument. It is sufficiently proved that this Sri Awasthi used to take interest in the Congress during the election days and in assessing oral evidence of the witnesses of Abhaipur we cannot forget that it was natural and likely that he asked people to vote for the Congress and voting for the Congress meant voting for the respondents who were the nominees of the Congress. The petitioner has produced four witnesses of Abhaipur namely P.W.33 Kaptan, P.W.34 Mahbub, P.W.35 Bindra and P.W.36 Bal Govind who all say that Sri Yag Datt did actually canvass them to give votes for the Congress candidates and there is nothing in their evidence and their cross-examination to show that they are in any way unworthy of belief. To rebut this evidence there is the solitary statement of one Ram Datt P.W.81 a villager who says that he also used to go to cut Phos with Kaptan but he did not meet Sri Yag Datt Awasthi. I have read his evidence and I am not impressed by it. The respondent had called another witness Parbhu Dayal of Abhaipur and who was present in Court on that date namely 22nd February 1955, but when Ram Datt did not fare well in his cross-examination this Parbhu Dayal was not produced. Under these circumstances I am prepared to hold that Sri Yag Datt did canvass the villagers of Abhaipur on 20th January 1953 and the respondents committed the major corrupt practice mentioned above. It is said that one day before the polling day namely on 21st January 1952 Sri Yag Datt along with Sri Karan Singh, respondent No. 1 and Sri Sri Ram Gupta came to the Ramiabehar market in the afternoon in a car and Sri Yag Datt and others made speeches. The petitioner has produced four witnesses Chhedi Lal P.W. 24, Brij Mohan Lal Verma P.W. 25, Ram Nath P.W. 27 and Baldeo Prasad P.W.28. They are all residents of village Kusaha and had gone to Ramiabehar market as it was market day. It has been argued that the witnesses named above produced by the petitioner are not worthy of belief because they are Kurmis. I am not prepared to discard their evidence on that ground. To rebut this evidence the respondents have produced one Dheeraj Singh R.W.64 and Goley R.W.66. I have read their evidence and I cannot accept their statement as unbiased. Dheeraj Singh says that he was polling agent of Sri Jagannath Prasad respondent No. 2. He further says that he applied for a Tagavi loan of Rs. 4,000/- out of which he has got Rs. 2,000/- and when cross-examined whether Sri Jagannath Prasad recommended the application, he had not the courage to deny that fact on oath but said that he did not know and his father may know

about it. It seems that this witness is friendly to Sri Jagannath Prasad and is under obligation to him. As regards Goley I find that he has taken more interest than the witnesses ordinarily do. In his cross-examination he says that he did not come to Lucknow with Dheeraj Singh but only met him here. He denies that he is in the service of Dheeraj Singh or his father Labh Singh. The more curious thing about his statement is that a Congress man whose name he does not know told him that his evidence was required in Lucknow and so he came to Lucknow without getting any summons. It is not known how he came to know where he had to give his evidence at Lucknow. I am not prepared to believe witnesses of this kind and these are the only two witnesses. Further Dheeraj Singh says that a car came in the market at about 4 P.M. and the only occupant was the Deputy Commissioner whereas Goley says that Deputy Commissioner's car came and the occupants were Deputy Commissioner and three or four others. The one fact which weighs most in my mind is the absence of Sri Yag Datt from the witness box and I cannot absolve him from his liability in as much as being a person serving under the Government he did assist respondent No. 1 and 2 in the election and did not come into the witness box to explain his actions.

I shall now take up the question of taking help from the Patwaris by respondents No. 1 and 2 in their election. Before I deal with the question of Patwaris giving assistance to respondents in their election it is necessary to examine the background. Sri Jagannath Prasad respondent No. 2 came to the Lakhimpur District on 11th May, 1954 accepting the Government service. He says in his statement that he was Qanoongo for 2½ or 3 years after which he got three or four temporary chances of working as a Naib Tahsildar and for about a year on the last occasion when he resigned. During the time that he was Qanoongo 98 villages out of 121 in the pargana of Dhaurara were in his charge and there was no change at any time. Besides this he had several occasions of acting as a Naib Tahsildar. For over seven years he was in Government service and had every hope of becoming a permanent Naib Tahsildar and even a Tahsildar. This respondent on the eve of his election suddenly resigns his Government post and plunges into what, I may call, political adventure. It has been argued that his leaving Government service and seeking election was a mere co-incidence or an accident. I cannot accept this argument. No person would leave a Government service on the off chance of being elected a member of the State Assembly without making his position sure. It is a calculated action and the calculation was made from his long acquaintance with the tenants, Patwaris and other persons with whom he worked and whose good opinion he earned and on whose help he counted. Having prepared the ground and banking on his work during service he came to the conclusion that it will not be a risk to give up Government service and he did so at the very last moment. We have, therefore, to judge and value the evidence regarding the help taken by the respondent No. 2 from the Patwaris of the constituency keeping this background before us. It will be an unrealistic approach if we do not do so. It may be noted here that the election work of respondents No. 1 and 2 were being done jointly and help from the patwaris was meant for both. I shall first deal with the case of Angney Lal Patwari of village Bailaha R.W.45. He is resident of village Jhandi where respondent No. 1 also resides. He was for some time Supervisor Kanoongo also. The petitioner's evidence is that during the week immediately preceding the polling day he canvassed for respondents No. 1 and 2 at villages Semra, Parua, Sujampur and Bairia and witnesses on this point are P.W.7 Paragi of Bairia, P.W.8 Ram Chandra of Semra and P.W.90 Mewa Lal of Parua. I have examined the evidence of these witnesses and they cannot be discarded. For example P.W.7 Paragi said that he saw Angney Lal canvassing for votes for the Congress candidates. In his cross-examination which is very short, nothing has been brought out to show that his evidence is not worthy of credit. The other witness Ram Chandra P.W.8 is an important person and was worker and polling agent of the petitioner but for that reason alone his evidence cannot be discarded. It is the workers and agents of the petitioner who would be watching carefully the activities of the workers of the opposite parties and it is they who can know things. I would not disbelieve this witness for that reason. The next witness is Mewa P.W.90 and he clearly says that Angney Lal canvassed others for votes. This witness is a Panch of the Gaon Sabha and an important person in his village and it was for this reason that the Congress workers brought Angney Lal to him, I have read the whole evidence and there is nothing brought out in his cross-examination to discredit him. As against this there is the statement of Angney Lal Patwari himself R.W.45. It is impossible to expect him to say that he did work for the Congress. Being a Government servant he will unhesitatingly deny being party to this corrupt practice. The same will be the case of respondents No. 1 and 2 who deny having taken any help from the patwaris. I shall not, therefore, place any reliance on mere denials and I shall base my judgment on the positive evidence given by the petitioner's witnesses. There is one other fact which has to be borne in mind



also. Babu Ram is the son of the Patwari Angney Lal. There is documentary evidence to show that this Babu Lal joined respondent No. 1 in making an application to the Deputy Commissioner for granting a lease of land to them under the U.P. Land Utilization Act. The fact that he joined such application shows that Angney Lal and his son are friendly with respondents No. 1 and 2 and I have no difficulty in believing under these circumstances that Angney Lal Patwari did assist respondents No. 1 and 2 in their election in question. It does not change the situation that Babu Ram ultimately backed out for reasons which I need not discuss here.

I shall now take up the case of Bankey Lal who has not been examined in this case. The petitioner's evidence consists of three witnesses namely Lakhpet Singh P. W. 128, Ram Chandra P. W. 121 and Ram Lal P. W. 130 all of Bhader. These witnesses say that Bankey Lal did canvassing for Congress candidates. Bankey Lal himself did not come forward to deny these allegations. The respondents have produced two witnesses Puttan Singh R. W. 56 and Mukund Ram R. W. 72. I am not impressed by the evidence of these witnesses. I may particularly refer to the statement of Mukund Ram who is alleged to have worked for the Congress and did propaganda in the company of the Patwaris and others. It is worthy of note that this witness was the polling agent of Sri Jagannath Prasad. This witness did not get any summons to appear in this case. Under these circumstances, and in the absence of Bankey Lal to explain things, I am prepared to hold that Bankey Lal did assist the respondents in their election in the present case.

I shall now come to the case of Sheoraj Bahadur who was Patwari of village Bela Garhi during the election. He is resident of Birsinghpur. The case of the petitioner is that some 16 days before the polling he did canvassing for respondents 1 and 2 at Bela Garhi and Birsinghpur and that on the polling day he canvassed for them at the Birsinghpur polling station where he was on official duty. The respondents have denied these allegations. The petitioner in support of these allegations has produced six witnesses, all of them are electors, the last being also polling agent; they state on oath that this patwari asked them to vote for the Congress candidate. These witnesses are P. W. 67 Prag, P. W. 70 Sheo Charan, both of Bela Garhi, P. W. 71, Surajpal, P. W. 72 Kashi Ram and P. W. 75 Nageshwar Dutt all of Bela Garhi. There is nothing which has been brought out in their cross-examination to discredit these witnesses. To rebut this evidence the respondents have produced R. W. 86 Mahabali who simply says that Sheo Raj Bahadur did not ask him or any other resident of his village to vote for the Congress. He further says that Sri Jagannath Prasad respondent No. 2 did not visit his village Bela Garhi. The statement of this witness cannot be construed to mean that he was all along with Sheoraj Bahadur to see what work he was doing. Such a general statement is of no value. R. W. 87 Sheo Raj Bahadur has of course denied that he canvassed for the respondents; he says however that he had known Sri Jagannath Prasad for 7 or 8 years as he was his Canoongo. He further says, "I do not know if in the election days Sri Jagannath Prasad visited either of these villages" he means the villages of Bela Garhi and Birsinghpur. He does not deny on oath that Sri Jagannath Prasad did not come to these villages at all during election. He denies that Jagannath Prasad ever stayed with him at his house at any time. I cannot accept this sweeping denial. They have known each other for 7 or 8 years and there is nothing unlikely, in fact it is natural, that when on his tour Sri Jagannath Prasad would stay with a Patwari working under him. As I have stated before there is nothing to show that Sri Jagannath Prasad and this Patwari were unfriendly to each other and I find no hesitation in holding that Sheoraj Bahadur patwari did assist the respondents in their election.

I shall now take up the case of Bisheshwar Dayal patwari of Chehalua during election days. He is resident of Kabiraha. The case of the petitioner is that this patwari worked and canvassed for the respondents at Lakhai and Gurdinpurwa during the election days and also canvassed at the Kabiraha polling station on the polling day. The canvassing at Lakhai is said to have been done in the company of Bhagwati Prasad Ghagh R. W. 82 by holding an election meeting there at the house of Sabita Din Misra and they had another election meeting at the same place 5 or 6 days before the polling. The petitioner has produced witnesses P. W's. 64, 65 and 66 namely, Banshi, Bhagwati and Chandrika all of Lakhai and P. W. 67 Wasalat of Gurdinpurwa. All these witnesses support the petitioner's case. The respondents have produced Bisheshwar Dayal Patwari himself R. W. 78 and Bhagwati Prasad Ghagh R. W. 82. Bisheshwar Dayal denies having done any work during the election. He admits however that he was under Sri Jagannath Prasad respondent No. 2 when he was Naib Tahsildar. Regarding Bhagwati

Prasad Ghagh R. W. 82 I wish only to say that he is a partisan of the respondents and his denial has no value. The important factor that has to be considered is that Sabita Din Misra at whose house the meetings are said to have taken place has not been produced. I would, therefore, accept the evidence of the petitioner and refuse to act on the denial of the respondents' witnesses and hold that Bisheshwar Dayal Patwari did assist respondents No. 1 and 2 in their election.

I shall now consider the cases of Mukhias. Originally the petitioner did not allege this corrupt practice and he introduced this by an application for amendment dated 4th December 1953 supported by an affidavit. The said amendment application was allowed by majority by an order dated 13th January 1954. The respondent No. 1 filed a written statement *inter alia* alleging that he (respondent No. 1) did not procure any assistance of any village headman knowing them to be as such. The petitioner had given the names of three mukhias who were alleged to have worked for the respondents as their polling agents but at the time of arguments his case was confined to two Mukhias only namely one Kanhai Lal Mukhia of Khairani and Tulsi Ram Mukhia of Sarpataha. The fact that these two persons were mukhias and were polling agents at Dubaha polling station and Trikaulla polling station respectively is not in controversy now. But it has been argued on behalf of the respondents that in view of the decision of their Lordships of the Supreme Court of India reported in A.I.R. (1954) Supreme Court, page 587, the mere acting by a Government servant as polling agent is not obtaining assistance from a Government servant for the furtherance of the prospects of the candidate's election within the meaning of Section 123(8) of the Representation of the People Act. In view of the above decision of the Supreme Court there is no scope for argument but the petitioner's counsel has argued that when petitioner's evidence was being recorded on this point, he desired to ask questions to the witnesses regarding other work done by these mukhias besides acting merely as polling agents. The petitioner was not allowed to do so and it is contended that in the special circumstances of this case the exclusion of such evidence has resulted in failure of justice. His second argument is that from the evidence already recorded in this case an inference should be drawn that these two mukhias did something more than merely working as polling agents.

To appreciate the first argument it is necessary to consider the date of the application for amendment namely 4th December 1953 and the date of the order allowing amendment namely 13th January, 1954. It is argued that at the time when the application for amendment was made the interpretation put on Section 123(8) by the members of the bar was that anything done by a Government servant besides casting his own vote is in furtherance of the prospects of a candidate's election. Thus if a Government servant acts as polling agent that by itself was construed to be obtaining assistance from a Government servant and came within the mischief of Section 123(8) of the Representation of the People Act.

I expressed the same view in the case of Shri Tirloki Singh Vs. Shri Harish Chandra Bajpai and others—Election Petition No. 320 of 1952. The counsel for the petitioner submits that in view of the law as understood at that time it was not necessary for him to allege in his petition and to prove that the mukhias mentioned above did any other work except merely acting as polling agent. This explanation is perhaps right but it will not give the petitioner any ground for producing evidence about facts not alleged in the petition.

I shall now deal with the second part of the argument of the petitioner's counsel. The evidence produced against the two Mukhias Kanhai Lal and Tulsi Ram is that both these persons are influential persons of the villages of which they are Mukhias, Tulsi Ram being also Pradhan of the Monda Buzurg consisting of 12 hamlets. The evidence on the record against these persons is that they were sitting at the Congress camp outside the polling station besides working inside the polling station as polling agents. They were going inside the polling station and coming out and it is argued that this conduct of the mukhias is over and above their acting merely as polling agents. This argument is not without some force. The presence of these influential persons at the Congress camps where voters gather is calculated to produce in the minds of the voters that these influential persons are supporters of the Congress candidates and this is really an attempt by the candidates and their agents to obtain assistance from these mukhias for the furtherance of the prospects of their election. It is argued that this conduct of the mukhias brings the petitioner's case within the exception given in the judgment of their Lordships of the Supreme Court mentioned above. Reference has been made to the following passage of the said judgment, "But if that is established and if it is made out that the candidate or his agent had abused

the right to appoint a Government servant as polling agent by exploiting the situation for the furtherance of the prospect of his election, then the matter can be dealt with as an infringement of Section 123(8)," *vide* page 592, para 15. I would, therefore, hold that the two mukhias namely Kanhai Lal and Tulsi Ram did assist the respondents in furtherance of their election and as such corrupt practice as contemplated in Section 123(8) of the Representation of the People Act is proved.

I shall now deal with corrupt practice of the use of national symbol for the furtherance of the prospects of the respondents' election. The most important point to be considered in this connection is the printing and distribution of Ex. P3. It is a leaflet printed on behalf of the Congress candidates entitled, "Nehru Ji Ki Appeal" with a picture of Pandit Jawahar Lal Nehru and the tri-colour flag with 'chakra' in the middle. It is not denied that this is the national flag. However, it is alleged by the respondents that this leaflet Ex. P3 was not distributed in the constituency. The most important point, therefore, to be considered in this case is whether Ex. P3 was distributed within the constituency. To support their case the petitioner have produced a number of witnesses who say on oath that Ex. P3 was distributed within the constituency. These witnesses are P. W. 19 Subedar Singh of Jamhaura, P. W. 34 Brij Kishore of Palia, P. W. 35 Madan Lal of Palia, P. W. 36 Pearey Lal of Palia, P. W. 38 Baij Nath of Palia, P. W. 60 Avadh Behari Lal of Hardwahi, P. W. 79 Rameshwar Prasad of Jethra, P. W. 81 Madho Ram of Pakaria. The criticism against these witnesses is that many of them are workers of the petitioner. There is no doubt that some of them are workers of the petitioner, but that does not take away the value of their evidence because it will be the workers of the petitioner who will be watching the activities of the respondents and their workers, it will be their duty to find out what leaflets were distributed on behalf of the respondents and the Congress party and, therefore, there is nothing surprising if these workers of the petitioner actually and in fact had a copy of this leaflet which has been produced in this case by the petitioner. The respondents No. 1 and 2 deny the distribution of this leaflet within the constituency and they have produced some witnesses who deny the distribution of this leaflet.

The case set up by the respondents is that an order for printing of leaflet Ex. P3 was placed in the Sri Krishna Press at Lakhimpur. That leaflet Ex. P3 was printed with a block containing the picture of Pt. Jawahar Lal Nehru and the national flag, that when delivery was made of this leaflet at the Congress office they refused to take it because it contained the national flag and thereupon, the proprietor of the press was told that he will not be paid for this work and the printed copies of Ex. P3 were returned to him and it was 3 or 4 months after the polling and the Congress candidates were successful that Sri Bala Prasad Verma R. W. 46 the proprietor of Sri Krishna Press approached Sri Bansidhar Misra to make the payment to him, the cost of printing of Ex. P3 and it was then that payment was made. I have now to closely examine the statement of Sri Bala Prasad Verma for it is on the sole testimony of this witness that the story set up by the respondents is based.

The Sri Krishna Press of Lakhimpur of which Sri Bala Prasad Verma is the proprietor is a very small press. He says in his statement that he keeps no account of the income and expenditure of his press as the business is a small one. This witness was questioned about the persons who placed the order for the printing of Ex. P3 but he says that he maintained no order book at his press as it was a small one. He maintained no delivery book either to obtain the signatures of the customers in token of delivery of the printed material. When this witness was questioned about the manuscript copy of Ex. P3, he said in his statement that he noted down on the manuscript the number of copies to be printed but no other particulars of the order. He further says about Ex. P3 that no instructions about the printing of the block were noted on the manuscript copy and this manuscript copy has also been weeded out and the instruction for printing this block on the leaflet was a verbal instruction of a Congress man whose name he does not remember. He asked him to have a picture of Pt. Nehru printed on the leaflet Ex. P3. It will thus appear that there is no documentary evidence to support any of the statements of this witness and we have to rely on his sole testimony uncorroborated by any evidence to accept the story set up by the respondents and closed in their evidence only.

It has been argued by the respondents' counsel that this witness Bala Prasad was named as petitioner's witness but he was not produced. I am not surprised that the petitioner's counsel did not produce him as petitioner's witness, because having got rid of the manuscript copy of the leaflet Ex. P3 by weeding the same and not having any order book or account book or any other paper to bind him,

this witness Bala Prasad could make any statement without fear of contradiction, and he has done so in this case. He has said that he delivered the printed copies of Ex. P3 in the congress office, vaguely described by him as the customer. These printed copies were returned to him and they were lying in his press. He further says, "These printed copies must have been sold by me as waste papers a year or 18 months after the election." From this he asked the Tribunal to infer and he says on oath also that these leaflets were not distributed though he also says that he did not go into the constituency. As I have stated above that a copy of the leaflet Ex. P3 was in the possession of the petitioner and this has been explained by this witness in this way. He says, "Copy of Ex. P3 which is on the record as Ex. P3 was in the file in the press and the petitioner's mukhtar Sant Bux Singh obtained it from me." This Sant Bux Singh was in the witness-box but no such questions were put to him. I have already said above that a large number of witnesses have proved the distribution of this leaflet in the constituency. The respondents have denied this distribution which is natural and have produced two witnesses Sri Shri Ram Gupta and Chakrapan who also deny distribution. Sri Shri Ram Gupta is admittedly an enthusiastic congress worker and a partizan of the respondents and his denial means nothing. I have read the statement of Chakrapan and I am unable to rely upon the statement of this witness to rebut the presumption that the printed copies of his leaflet were used and distributed during the election. The importance of this document for the election propaganda is immense. It is an appeal by the greatest man of the country Pandit Jawahar Lal Nehru, the then President of the congress. I cannot believe that this very valuable appeal was not distributed within the constituency. If the evidence of Bala Prasad is to be believed the printed copies of Ex. P3 were delivered at the congress office a month before the polling and rejected; there was ample time to print this leaflet without the National flag and to distribute the same for the election. There is no evidence that this was done. I have no doubt in my mind that this very valuable appeal by Pandit Jawahar Lal Nehru namely Ex. P3 was printed and distributed within the constituency and further it seems to me that the mistake of printing the National Flag was only discovered when the petitioner raised it in his petition. It was under these circumstances that the respondents invented the story and put it in the mouth of Bala Prasad. I have no hesitation in disbelieving this story which is an after-thought. It appears that in this district Lakhimpur Kheri there were six congress candidates and the witness Bala Prasad says, "In all I must have printed about 15000 copies of such appeal for all the congress candidates." Out of these 15000 copies 5000 copies were allotted to this constituency. We do not know what happened to the other 10000 copies admittedly printed. In my opinion the respondents have failed to prove that Ex. P3 was not distributed within the constituency. I have stated above that the statement of Bala Prasad is deliberately vague and indefinite so that nobody may catch him. There is one name definitely given in his statement and it is of Sri Banshi Dhar Misra. He was the only person who could corroborate him in support of his strange story. This person who was named in the list of respondents' witnesses has not been produced in this case. He is a most enthusiastic congress worker and partizan of the respondents and he has involved himself in this election in so many matters that it was perhaps thought expedient not to produce him as a witness. Whatever the reason may be, he has not been produced and I am unable to rely on the uncorroborated testimony of Bala Prasad. I may finish this part of the case by referring to the statement of Bala Prasad who says that payment for Ex. P3 was made only after 3 or 4 months of the polling. An attempt has been made on behalf of the respondents No. 1 and 2 to show that the matter of payment of the printing charges of Ex. P3 stood on a different footing from their other election literature and that payment for Ex. P3 was made after 3 or 4 months of the polling. But the documentary evidence shows that payment for Ex. P3 was also made when the payment for all the literature was made about a month and a half after the polling. This was the only documentary evidence namely the bill and the receipt for payment which was available in this case from Bala Prasad's press and this document contradicts his statement hopelessly. I have no hesitation in coming to the conclusion that this leaflet Ex. P3 was printed and circulated within the constituency and the respondents made use of the national flag and the national symbol for the furtherance of the prospects of their election and they have committed the corrupt practice described under Section 124(5) of the Representation of the People Act.

I shall now take up the question of a large number of booklets published by the Information Department of the Uttar Pradesh Government and distributed in the constituency of respondents No. 1 and 2. It is alleged that this was done to further the prospects of the election of the respondents without paying or accounting for them. At the time of arguments the petitioner's counsel conceded that this did not amount to the major corrupt practice of obtaining assistance from persons serving under the Government within the meaning of Section 123(8)

of the Representation of the People Act, 1951. There is no doubt that the petitioner has not alleged and proved that the respondents obtained the assistance of Mr. Zaidi, Information Officer of the Information Directorate, Uttar Pradesh by securing the distribution of the literature published by this Department. The petitioner's counsel has however, argued that though he cannot bring his case under Section 123(8) of the Act still it is a minor corrupt practice under Section 124(1) of the Act. This sub-section reads as follows, "Any act specified in clauses 1 to 8 of Section 123, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent".

In order to appreciate his argument it is necessary to have a few facts. The nomination of the candidates for the general election took place in the third week of November, 1951. The propaganda on behalf of the Congress party *inter alia* was that they were the only party who could "deliver the goods" and, therefore, they should be entrusted with the Government of the State. The Congress Government was in power at the time of the election. In support of this propaganda some officers of the Government thought it necessary to tell the public and the electorate what work the Congress Government has done. It was at this psychological moment that the Information Department of the Uttar Pradesh Government published a number of pamphlets after the nominations and began to circulate the same from first of December 1951. I shall particularly refer to a letter from the Publication Officer, Information Directorate, Uttar Pradesh, Lucknow to all the District Planning Officers, Uttar Pradesh. It is dated 1st December, 1951 and I shall quote a few sentences from the same. They are as follows, "I am directed to say that Information Directorate have arranged to issue almost daily short pamphlets as bulletins entitled, 'Uttar Pradesh men.....'. The Pamphlets are likely to be of great use and it is requested that a suitable arrangement for their distribution may kindly be made in your district, particularly in small areas. An equal number of copies have been supplied direct to the District Congress Committee in your district." The pamphlets will be despatched to you from the Government Central Press at Allahabad and I am accordingly to request you that arrangement may be made for taking prompt delivery". This letter is signed by A. J. Zaidi, Publications Officer, Information Directorate. A list is attached for distribution and 300 copies have been allotted to this district Kheri. A perusal of this letter shows that the Uttar Pradesh Government officials thought it useful to publish these leaflets and circulate them within the constituency during the time when the canvassing by different candidates was going on. It has been argued by the respondents' counsel that it was a mere co-incidence that these pamphlets were issued during the election. I have no doubt in my mind that this hot haste in publishing these pamphlets and distributing them to the electorate was deliberately done in furtherance of the prospects of the election of the Congress candidates; otherwise what was the 'great use' and the necessity of 'prompt delivery' for these pamphlets I hold that these pamphlets published by the Information Directorate were timed in such a way as to help the Congress candidates in their election. It has been argued that these pamphlets were printed and distributed as a part of the planning scheme of the Government. The report on the first five year plan was presented in the House of the People in December 1952 nearly a year after the election and as I have said above these pamphlets merely gave the achievements of the Congress Government. I am, therefore, unable to accept this argument. There is no evidence that the respondents asked Mr. Zaidi or any servant to supply these pamphlets to them but the fact remains that they were a Government servant through the Government Press, Allahabad supplied these pamphlets to Kheri District for circulation and they were so circulated. I would, therefore, hold that the respondents are guilty of the minor corrupt practice contemplated under Section 124(1) of the Representation of the People Act.

I may add that this particular minor corrupt practice was not alleged in the petition but appeared from the evidence and was submitted at the time of argument. In as much as the actual publication and distribution of these pamphlets are proved, it becomes a pure question of law whether the minor corrupt practice under Section 124(1) of the Act has been committed or not. I feel therefore, that I am not debarred in law from coming to the conclusion that I have come namely that the respondents Nos. 1 and 2 have committed a corrupt practice under Section 124(1) of the Representation of the People Act, 1951.

I wish to add further that I did not express this view in the case of Sri Triloki Singh Vs. Sri Harish Chandra Bajpai and others as I then thought that it was an isolated matter and I did not wish to dissent from the view taken by the learned Chairman in that case. It seems to me now that this method was used throughout the State of U.P. and it is, therefore, proper that I should express my views in this matter.

*Issues Nos. 6 and 7.*—These issues relate to the minor corrupt practice of making and verifying a return of election expenses which are false in material particulars. The allegations are contained in para. 7(xv) and 8 of the petition. A large number of omissions are alleged and proved. The contention of the respondents is that these omissions are due to any corrupt or dishonest motive. My learned colleagues are prepared to hold that these omissions though large do not constitute the corrupt practice described in Section 124(4) of the Representation of the People Act. They are of the opinion that the omissions do not make the returns false in any material particulars. My learned colleagues have held that at least in six cases the respondents should have shown the expenses in their returns of election expenses. The total amount of these omitted items will not be much beyond Rs. 1,000 and as the amounts shown to have been spent by the respondents are very little, the addition of this Rs. 1,000 or so will not take it beyond the permitted amount of expenditure of these respondents. As I have stated above my learned colleagues have accepted omissions as regards six items only, I wish to add at least two more to this and I wish further to discuss the position of the Congress Parliamentary Board in regards to the expenses incurred by them in the election. I shall first consider the item of expenditure challenged in paragraph 8(a) of the petition namely that the respondents have not included the expense incurred by them for the purchase of any copy of the electoral roll. It will appear from the respondents' statements that one Sri Niwatia who was a candidate for the House of the People from this district did everything for them; but this gentleman has not been produced in this case and burden has been cast on the petitioner to prove all the expenditure done by the Congress Parliamentary Board and Sri Niwatia. In my opinion the burden has wrongly been cast on the petitioner.

Under Section 44 of the Representation of the People Act a duty has been cast on the election agent to keep separate and regular books of account and to enter therein such particular of expenditure in connection with the election as may be prescribed. If there is no election agent then this duty is cast on the candidate himself. What the books of account shall contain are given in Rule 11 of the rules framed under the Representation of the People Act. No person who is not authorized in writing by the candidate can incur any expenditure in connection with the election and if it is done it will be an illegal practice. The only exception that has been made is given in the explanation to Section 125 of the Act. It reads as follows, "Any such expenses as aforesaid incurred or authorised by any institution or organisation for the furtherance of the prospects of the election of a candidate supported by such institution or organization shall not be deemed to be expenses incurred or authorized within the meaning of this clause namely 125(1)". It will thus appear that the various political organizations may set up candidates for the election and incur expenditure for their candidates without authority in writing from the candidate. These political institutions or organizations constitute themselves as election agents of the candidates set up by them and in law they must maintain an account of the election expenses and this account is part and parcel of the expenditure incurred and the account maintained by the candidates himself, or his agent. It is the duty of the respondents to produce these accounts which must be maintained by the political organisations and if they are not produced an inference may be drawn that if produced it will go against the respondents. It is not the duty of the petitioner to give secondary evidence of the contents of the account books of the respondents or their agents. The account books of the Congress Parliamentary Boards of U.P. were summoned in the case of Sri Tirloki Singh Vs. Sri Harish Chandra Bajpai and others, Election Petition No. 330 of 1952, but they were not produced as a clerk of the Congress office stated that it was not to be found in the office. In the present case they were not summoned at all because the petitioner who was a counsel in Sri Tirloki Singh's case know what the result will be. I am, therefore, of the opinion that it was the duty of the respondents to have produced the accounts maintained by the Congress organisation namely the U.P. Parliamentary Board, the Chunao Board etc. and as they have not done so a presumption arises that these account books, if produced, would have gone against the respondents.

I am of the opinion that no election can be fought without copies of electoral rolls and it may be that the Congress Parliamentary Board may have purchased a large number of copies of the electoral rolls, some of which may have been used within the constituency by Congress workers.

My learned colleagues have allowed Rs. 650 for literature issued by the Congress Parliamentary Board. This amount has been arrived at as a mere guess but if the Congress organisations had produced the account books, we would not have been left guessing. We would have known definitely what the Congress organisation actually spent for this literature in this constituency. I have only

one observation to make regarding the literature issued by the Information Department of the U.P. State. These were, according to my finding, issued for the furtherance of the prospects of the election of the Congress candidates. They were distributed free and their equivalent should have been shown in the election expenses.

I wish to make a few general observations regarding the interpretation to be put on Section 124(4) of the Representation of the People Act. It is provided by Section 76 of the Act that the return of election expenses shall be in the prescribed form and shall be accompanied by prescribed declarations by the candidate and his election agent, if any. Rule 117 prescribes the maximum election expenses and rule 116 provides for the number of persons who may be employed for payment in connection with an election. If there is any contravention of any of these rules it amounts to a major corrupt practice under Section 183(7). If, however, it does not contravene these rules but the returns of election expenses is false in material particulars it becomes minor corrupt practice under Section 124(4) of the Act. As I have stated above form of return of election expenses is given in Schedule 1 of the Act. I need not go into great detail about the form but I shall consider only the form of declaration that has to be made by the candidate. I give below the relevant portion of the declaration:—

"I ..... being a candidate for election ..... solemnly affirm that the above return of election expense is true to the best of my knowledge and belief, and that except the expenses herein set forth no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purposes of my candidature".

Reading this declaration it seems to me that if a candidate makes a large number of omissions in his return of election expenses, in this case at least six and even if it be due to ignorance of fact or law it becomes an untrue declaration and an untrue return and I shall not hesitate to call such a return false in material particulars. I am of the opinion that the omission to include the expenses incurred by the Congress organizations is deliberate and not due to any *bona fide* mistake. It is at least due to gross negligence, even if we take a charitable view of it. If candidates were free to make such reckless declarations the sanctity of oath will disappear and in my view it was never the intention of the legislature to allow such a large number of omissions to come in without incurring any responsibility. I would, therefore, hold that the return of election expenses filed by the respondents were false in material particulars and that they are guilty of a minor corrupt practice as contemplated under Section 124(4) of the Act.

*Issues No. 3A and 3B.*—The facts relating to this issue are not disputed. It appears that Sri Karan Singh respondent No. 1 along with others made two applications to the Deputy Commissioner of Lakhimpur, one dated 29th September, 1950 praying that he along with others be granted a lease of 242.76 acres of land in village Khamaria under the U.P. Land Utilization Act (V of 1948). The Deputy Commissioner by an order, dated 3rd September 1951 granted to respondent No. 1 and others lease of 100 acres of land only. A similar application was made to the Deputy Commissioner on 7th October, 1950 by respondent No. 1 and five other persons praying that a lease of 133.8 acres of land be granted to them in village Bailaha. By an order, dated 7th March 1951 the Deputy Commissioner granted the lease. It appears that regarding village Khamaria a Qabuliat was executed on 24th April, 1952 by the respondent No. 1 and others in favour of Deputy Commissioner agreeing *inter alia* to sell to the State Government one half of the grain produced over that land at such rates as may be fixed by the State Government from time to time. The question raised by this issue is whether this agreement to sell to the State Government one half of the grain produced over the land amounts to a contract for the supply of goods to the State Government of U.P. or whether it is a contract for the performance of any services undertaken by the State Government of U.P. If this amounts to a contract then the respondent No. 1 will be disqualified for being chosen as, and for being a member of the Legislative Assembly of the State of U.P.

A similar question was raised before the Faizabad Tribunal in the case of Sri Bholanath Vs. Sri Krishna Chandra Gupta reported in in Vol. VI, Election Law reports page 104. That case was decided on similar facts and it was held that a person to whom the Collector has leased out land under Section 4 of the U.P. Land Utilization Act, 1948, is not disqualified under Section 7(d) of the Representation of the People Act, 1951, as the transaction is not a contract express or implied, between the lessee and the State Government for the supply of goods to or the performance of any services undertaken by the State Government.

The same question has been raised in this case and it is now argued that the decision of the said Tribunal is not correct and requires reconsiderations. As I was a party to the judgment in that case I have given serious consideration to the question and I have come to the conclusion that the said case of *Bhola Nath vs. Krishna Chandra Gupta* was not correctly decided.

In order to appreciate and correctly interpret the U.P. Land Utilization Act (Act V of 1948) it is necessary to know the objects and reasons why the said Act was passed. About the year 1945 there was shortage of foodgrains in the U.P. State and in order to increase the production of foodstuffs the State Government thought it necessary to utilize land which was lying uncultivated within the State. The matter was so urgent that the U.P. Government passed an ordinance in 1947 and followed it up by the U.P. Land Utilization Act referred to above. The preamble to the said Act is as follows, "whereas it is expedient to provide for powers to utilize uncultivated land with a view to increasing the production of foodstuffs." It appears that the State of Uttar Pradesh had undertaken to supply foodgrains to the citizens of the State and with a view to the performance of the services so undertaken the State Government passed the above Act to see that uncultivated land was brought under cultivation and it was further provided in Section 4 of the Act that where any land is brought under cultivation in accordance with the provisions of this Act, the landlord or the tenant cultivating such land shall, on demand by Collector, sell to the State Government one half of the grain produced over such land at such rates as may be fixed by the State Government from time to time. The power to arrange for the cultivation of such land was delegated to the Collector of the District and it was in the exercise of the power so delegated that the Deputy Commissioner of Lakhimpur Kheri granted a lease of the land to the respondent No. 1 and others on the terms and conditions mentioned in the Act.

The Supreme Court of India has held in a recent case that for the purposes of contract for supply of goods to the Government it is not necessary that the Government should be able to enforce the contract. Further, the contract need not be with the Government in the form required by the Constitution of India. If an agreement or arrangement is entered into by an officer of the Government for and on behalf of the Government it will be a good contract though the Government as such will not be bound by the contract in that case. I may refer to the case of *Chaturbhuj Vithal Das Jasanl vs. Moreshwar Parshram* and others, Supreme Court of India, IX Election Law Reports, page 301. I may particularly refer to the passage at page 317 bottom and page 318 I may quote just one sentence from the paragraph referred to above. It is as follows, "It may be that the Government will not be bound by the contract in that case, but that is a very different thing from saying that the contracts as such are void and of no effect. It only means that the principle cannot be used, but we take it there would be nothing to prevent ratification specially if that was for the benefit of the Government."

Before I proceed to consider the provisions of Uttar Pradesh Land Utilization Act, I shall consider the case of *Bhola Nath Vs. Krishna Chandra Gupta* and others and consider the reasons for the decision of that case. The counsel of the parties agree that the reasons may be classified under four heads, (1) that there was no contract with the Government, (2) the transaction is not based on volition but is a statutory obligation, (3) that there is no provision for breach of contract, if it is a contract, (4) that there is no mutuality. As regards the first point namely that there should be a contract with the U.P. Government it is now agreed by the counsel of the parties and it was also held by the Faizabad Tribunal in the case of *Sri Hanuman Prasad vs. Sri Tara Chand* and others, reported in 5 Election Law Reports, page 446 that it was not necessary that there should be a contract with the Government for supply of goods. All that was necessary was that there should be a contract for the supply of goods to ..... or performance of any services undertaken by the appropriate Government. I need not, therefore say anything more on this point.

I propose to take up points 2 and 3 together.

The question which has been agitated and argued vehemently on both sides is whether the condition accepted by the tenant to sell to the State Government one half of the grain produced over the land leased in a contract voluntarily entered into by the tenant or it is a statutory obligation imposed on the tenant under Section 4 of the U.P. Land Utilization Act. The question is not free from difficulty but I have come to the conclusion that it is not a statutory obligation but a transaction voluntarily entered into by the tenant to help the U.P. Government to perform the services undertaken by that Government namely to supply foodgrains to the people of the State. As I have stated above the Government



of U.P. gave power to the Collector of the District to grant leases of land under this Act. Rule 6 of the rules made under the Act provides as follows, "Leases and their counter-parts relating to land let out under the Act shall be in the form set out in the third schedule ..... with suitable modifications to cover cases governed by Section 4 of the said Act.

In the present case what happened was that the respondent No. 1 along with others made an application to the Deputy Commissioner, Lakhimpur on 29th September 1950 asking that 242 acres of land in village Khamaria be given to them for cultivation. The application Ex. P144 reads as follows, "*Main U.P. Land Utilization Act 1947 ke matahat n-che likhi hui arazi ki kasht karne chahta hun. Main Act mozkoor ki jumla sharyaton (terms) ki pabandi karte hue is arazi ko fauran kasht me le loonga.*"

The other application is Ex. P146 and relates to land in village Bailaha. It is dated 7th October, 1950. The language of this application is exactly the same and need not be repeated. It will appear from these applications that the applicant namely respondent No. 1 and others agreed to cultivate this land if given to them and abide by all the terms of the U.P. Land Utilization Act. It is argued that it was not necessary for the applicants to write in their application that they will abide by the terms of the Act and it was a statutory obligation and not an obligation voluntarily undertaken by the tenant. This was the argument which appealed to us in Bholanath's case but I feel that that view was erroneous and was due to a wrong approach to the case. If we analyse the transaction of lease between the Deputy Commissioner and respondent No. 1 it will appear that the respondent No. 1 voluntarily offered to cultivate land and further *agreed as one of the terms of the lease to sell one half of the grain produced over such land to the State Government on demand.* This offer was accepted by the Deputy Commissioner. It was for a valuable consideration. The respondent No. 1 along with others got from the Deputy Commissioner large tracts of land on very small rent and with the rights of hereditary tenants. Under the power given to the Deputy Commissioner by this Act it was incumbent on the Deputy Commissioner not to grant lease of such land without obtaining from the tenant an obligation to supply food grains to the Government as mentioned above. The Deputy Commissioner was enjoined by the Act to obtain from the tenants agreement to that effect. The compulsion, if any, was on the Deputy Commissioner to get such a term embodied in the lease but it was purely voluntary for the tenant (respondent No. 1) to apply for land on such terms and conditions. No one compelled him to take the land but if he wanted to take the land one of the terms of the lease would be that he would have to sell to the Government half the produce of the land. I am, therefore, of the opinion that the tenant (respondent No. 1) voluntarily entered into this transaction of lease and *one of the terms of the lease he willingly agreed to abide by was that he would sell to the U.P. State half the produce of the land.* I may, at this stage, refer to the case of Satyanatham Vs. Subrahmayan and others decided by the Madras High Court on a writ petition and reported in Vol. IX, Election Law Report, page 394. The facts of this case are as follows. The petitioner who was a transport operator had entered into a contract with the Union Government for the conveyance of mails by his transport vehicle. This contract with the Union Government was arrived at under the following circumstances. The petitioner applied for permit to ply motor vehicle in Salem. Under Section 48 of the Motor Vehicles Act the Transport Authority of the State may attach to a stage carriage permit any prescribed conditions. Rule 160(B) of the said Act provided, "It shall be a condition of every stage carriage permit that the holder of the permit shall, if so required by the transport authority which granted the permit, carry mails at such rates and on such terms as the transport authority may fix after consultation with the holder of the permit and postal authorities concerned."

The statutory condition was incorporated in the standard permit forms for carriages and in terms exactly identical with Rule 160(b). The petitioner in this case who had been granted a permit and who had agreed to the condition to carry mails, subsequently, in pursuance of the condition mentioned above entered into a separate agreement with the postal authority. A separate agreement became necessary because the Regional Transport Authority which granted the permit was an official of the State Government but the postal authorities were of Central Government. It was on these facts that it was argued on behalf of the petitioner that the services which the petitioner was rendering to the Union Government are those which he had been directed so to render by the terms and conditions of the permit which he had obtained as a transport operator and as he had no option but to enter into such a contract, by reason of rule 160(b), it was devoid of all volition and the elements of a contract were not there. This argument was not accepted by the Madras High Court in this case. It was held that if a

transport operator with the full knowledge that if he were granted a permit he would have to enter into a contract to carry mails, makes an application for a permit for a state carriage, and obtains the same, it could hardly be said that he does not enter into the contract voluntarily, for his very application for a permit implies a consent to enter into the agreement if so directed with the postal authority for the carriage of mails. This case was taken to the Supreme Court and the judgment of the Madras High Court was confirmed.

The facts of the present case are very similar. No one compelled the respondent No. 1 to apply for land and when he did apply, he applied with the full knowledge that one of the terms of the lease would be that he would have to sell half the produce of the land to the U.P. State. In my opinion, therefore, he voluntarily offered to the Collector to grant to him lease of the land and he voluntarily agreed to sell half the produce to the Government. This offer was accepted by the Deputy Commissioner and it has all the elements of a valid contract. There was the offer, there was the acceptance, and there was valuable consideration namely that the tenant (respondent No. 1) got hereditary right in large tracts of land on a very moderate rent. I, therefore, hold that the transaction is a contract for the supply of goods to and performance of services undertaken by the U.P. State and the respondent No. 1 is, therefore, disqualified under Section 7(d) of the Act. It has been argued that in the Madras case cited above there was a separate contract between Satyanathan the permit holder and the postal authorities (Central Government). I have already stated that a separate contract became necessary because the permit was issued by the State Government of Madras and the condition in the permit was that the permit holder should carry mail for the Central Government. If the condition imposed by the permit had been to carry, for example, foodgrains for the State Government, no separate contract would have been necessary and a term embodied in the permit itself would have been sufficient. A case like this arose in the case of Maharaja Parlakimedi Vs. Bijay Chandra Das and others reported in Election Law Report Vol. IV page 101. In that case the Governor General in Council granted a lease to the Maharaja of Parlakimedi under which the Government demised to the petitioner for a period of 25 years certain piece of land together with all salt pans and brine pans described as a salt factory. Clause 17(a) of the lease provided, *inter alia*, that the lessor i.e. the Central Government will have the option to purchase at such rate as may be decided by the Collector from time to time, 50 per cent. of the salt produced by the lessee in the factory. I do not propose to quote here the entire clause. In this case as the lease and the contract for the sale of 50 per cent. of the produce of the factory was with the same Government, namely, the Central Government, no separate contract for the sale of the produce became necessary and it was held in that case that clause 17(a) contained a contractual obligation and was not merely an incident of the lease; that the agreement was not merely a standing offer which became a contract when the Government exercised its option to purchase the salt but a binding contract to supply goods and the petitioner in that case was, therefore, interested in a contract for supply of goods to the appropriate Government within the meaning of Section 7(d) of the Representation of the People Act, 1951.

The facts of this case are very similar to the facts of the case of Maharaja of Parlakimedi. The Deputy Commissioner of Lakhimpur Kheri granted to respondent No. 1 (along with others) lease of large tracts of land for the purpose of cultivation and one of the terms of the lease was that the respondent shall on demand by the Deputy Commissioner, sell to the State Government one half of the grain produced over such land at such rate as may be fixed by the Government from time to time. I am, therefore, unable to distinguish this case from the cases referred to above. Before I part with the case of Maharaja of Parlakimedi Vs. Bijay Chandra Das I think it necessary to refer to one matter in the judgment of the Tribunal at page 109. It appears that the case of Reg. Vs. Demers (1900) Appeal Case page 103 was cited before the Tribunal and the learned members of the Tribunal were of the opinion that the said Privy Council case held "that a contract would only arise creating the obligation of the Government to pay for work done, if the Government accepted the offer by placing orders." This reading of the judgment of the Privy Council created a difficulty for them and the last part of the judgment is devoted to overcome that difficulty. I have read the Privy Council judgment but I do not find any such difficulty. The head note of that case is as follows, "Where the respondent contracted with the Government to execute for a term of years the printing and binding of certain public documents at stipulated prices, but the Government did not expressly contract to give to the respondent all or of the said work:—

Held, that a stipulation to that effect could not be implied, and that there was no breach of contract by reason of orders for work being withheld.

I may usefully quote one paragraph from the said judgment of their Lordships of the Privy Council in order to show that a transaction of this nature where the Government has the option to purchase or not to purchase grain amounts to a contract as contemplated by law. "The contract purports to be made between Her Majesty the Queen, represented by the provincial secretary, and the respondent Demers. It does not purport to contain any covenant or obligation of any sort on the part of the Crown. The respondent undertakes to print certain public documents at certain specified rates. For all work given to him on the footing of the contract the Government was undoubtedly bound to pay according to the agreed tariff. But the contract imposes no obligation on the Crown to pay the respondent for work not given to him for execution. There is nothing in the contract binding the Government to give to the respondent all or any of the printing work referred to in the contract, nor is there anything in it to prevent the Government from giving the whole of the work, or such part as they think fit to any other printer".

I shall now deal with point No. 3 namely that there is no provision for breach of contract, if it is a contract. It seems that the Tribunal in the case of Bholanath were very much influenced by Section 7 of the U.P. Land Utilization Act which provides for a penalty. That Section reads as follows, "If any person contravenes any provisions of this Act or any rule made thereunder or any order passed in pursuance of this Act, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both". There is no doubt that the Legislature provided a penalty but there is nothing in the Act to show that the civil remedy was taken away. In my opinion there is both a civil remedy and penalty and it will be wrong to presume that the civil remedy was taken away by providing for a penalty. Suppose a tenant produces foodgrains on land given to him by the Collector under this Act and the Collector demands from such tenant foodgrains, can he tell the Collector that he will not sell foodgrains to him but that he may be sent to prison? In my opinion he cannot do that and I have no doubt in my mind that a civil court will give relief to the Collector and in a proper case may even order the tenant to actually hand over food grains which he had undertaken to sell to the Collector under the terms of the lease. It was certainly an obligation as defined in the Specific Relief Act (Act 1 of 1877) and originated in a contract. I do not propose to develop this point any further.

The question of mutuality need not detain me long. Two parties can enter into any agreement and accept any terms that they desire provided the consideration or object of the agreement is lawful and is not immoral or opposed to public policy. In my opinion mutuality is not a *sine qua non* of a contract. It is easy to give instances in which there is no mutuality and still there is a contract. The Privy Council case of Reg. Vs. Demers, the Supreme Court case of Chaturbhuj Vithal Das Jasani Vs. Moreswar Parashram and others referred to above and the present case are instances of that kind. I shall cite here the case of Rajbenbach Vs. Mamon reported in All England Law Reports 1955 Vol. 1 page 12. The whole case is worthy of perusal but I shall quote only one passage from the judgment at page 14. "I can find no authority which suggests and no such authority has been cited to me, that an agreement such as this is in any way against public policy nor do I think that it is an agreement which must be treated as void and of no effect for want of mutuality. Ordinarily in a contract there would be mutuality but many examples, if necessary, can be given where Parliament has stepped in and, to some extent robbed a contract of some degree of mutuality without destroying it, and I think that this is one of those contracts". For the reasons given above I am of the opinion that the obligation undertaken by respondent No. 1 to sell half the produce of the land to the Collector is a contract for supply of goods to and performance of services undertaken by the State Government and as such it is a disqualification under Section 7(d) of the Representation of the People Act. This is enough for the disposal of the case on this point but my learned colleagues have in their judgment raised points which it is necessary for me to consider.

The first point taken by them is a mixed question of fact and law. Respondent No. 1 in his written statement admitted that he along with others was holding as tenant a plot of land belonging to Majhgain Estate. He further says that he neither paid anything in cash or in kind to the Government. There is nothing in his written statement to show that he did not cultivate the land which he took from the Government on lease nor is there any mention that he gave away this land as gift (Bhumidan) to Sri Vinova Bhawe. This case was for the first time stated by the respondent in his statement as practically the last witness in the case. The petitioner did not know anything about this new defence until the case was over. The petitioner could not divine what the respondent No. 1 would

say in the witness-box. If he set up this new case it was for him to prove this by documentary evidence which he has not done. It would be unfair for me to put the burden on the petitioner. Further, I do not believe that the statement of respondent No. 1 is true in this matter. He does not say that the plot given to him along with others for cultivation was not cultivated. He only says that there was some private partition between the co-tenants and he did not cultivate his share. This shows that in the revenue papers all the tenants are co-tenants and there is no partition between the co-tenants as recognised by law. I have no hesitation in holding that this is a false defence set up at the last moment and should not be accepted. Then there is the question of the gift of this land to Sri Vinova Bhawe. The respondent No. 1 is a hereditary tenant along with others and the law he has not right to make a gift of his portion of the land as alleged by him. There is no document on the record on this point and I refuse to believe the statement of respondent No. 1 as true. This is my finding on facts.

In support of his contention the learned counsel for respondent No. 1 has argued on many points some of which I shall touch in my order as they have been accepted by my learned colleagues. It has been argued that the applications by respondent No. 1 for cultivation of land were not offers to cultivate the uncultivated land but they were mere applications to bring to the notice of the Collector that some lands were lying uncultivated. This argument is not in consonance with the provisions of the U.P. Land Utilization Act, 1947 and the rules made thereunder. I may quote here Rule 5 made under the Act. It is as follows:—"The Collector shall maintain an upto-date chart in his office showing necessary particulars of culturable waste lands of half an acre over on the districts of Nainital, Almora and Garhwal and of five acres and over, in the remaining districts." It is the duty of the Collector to maintain an upto-date chart of all culturable lands which are not under cultivation and it is the Collector himself who calls on all the landlords to let out such lands or pre-arrange for their cultivation. I am unable to construe these applications as not offers to cultivate the land.

It has also been argued that the provision of Section 4 of the U.P. Land Utilization Act for sale of half the produce of uncultivated land to the State Government in the nature of a tax, like the Agricultural Income Tax. I am unable to agree with this reasoning. A tax when levied is not some thing which the Government may or may not collect at its option; in the present case the Collector may or may not make any demand of foodgrains from the cultivator. He may even make demand of less than half the produce. It will be a strange kind of tax which varies with the decision of the Collector. I have no doubt in my mind that it is not in the nature of a tax at all.

It has been observed by my learned colleagues that the provisions of Section 4 of the U.P. Land Utilization Act is a scheme for procurement of grain and is foreign to the scope and object of the Act. The ordinance issued by the Government for the procurement of foodgrains is different in nature from the provision of this section. In my opinion the arrangement for the cultivation of uncultivated land and grow more food on such land and further to take to the extent of half of the produce by the Collector on demand is in its nature different from the procurement scheme referred to above. I have no doubt in my mind that this provision originated in a contract and, therefore, hit by the provision of Section 7(d) of the Representation of the People Act. It has also been argued that the U.P. Land Utilization Act has now been repealed and there is no contract now in existence. The U.P. Land Utilization Act was repealed by the amending Act XVI of 1953, long after the election and it will not affect the status of respondent No. 1 on the date of his nomination which was on 24th November 1951. The repeal of the said Act only means that the Collector's power to make the demand of foodgrains produced on uncultivated land has been taken away and, therefore, the respondent No. 1 has not to perform now his part of the contract.

For the reasons given by me above I have no doubt in my mind that the respondent No. 1 was on the date of the nomination disqualified under Section 7(d) of the Representation of the People Act, inasmuch as he had an interest in a contract for the supply of goods to, and the performance of services undertaken by the appropriate Government.

For the reasons given above I hold (1) that respondent No. 1 committed the corrupt practice of bribery as defined in Section 103(1) of the Act, (2) that respondents No. 1 and 2 were guilty of the corrupt practice described in Section 123(8), (3) that the respondents No. 1 and 2 committed the corrupt practice as defined under Section 124(1) of the Act, (4) that the respondents No. 1 and 2 committed the corrupt practice described in Section 124(4), (5) that the respondents No. 1 and 2 committed the corrupt practice described in Section 124(5) of

the Act and (6) that respondent No. 1 was on the date of his nomination disqualified for being chosen, and for being a member of the Legislative Assembly under Section 7(d) of the Act.

I, therefore, declare that the election of respondents No. 1 and 2 is void and should be set aside.

This finding and declaration does not dispose of the petition, inasmuch as, the petitioner has further prayed that he (the petitioner) and respondent No. 4 be declared to have been duly elected from the constituency in question. It has, therefore, become necessary to consider whether the petitioner and respondent No. 4 are entitled to be declared elected. This question has created a great difficulty. It involves the interpretation of Section 101 of the Act which reads as follows:—

"If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Tribunal is of the opinion,

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the Tribunal shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected."

There are two conditions mentioned above for declaring the petitioner to be duly elected. I shall consider the condition (a) first. I have held in this case that the respondent No. 1 was disqualified under Section 7(d) of the Representation of the People Act and, therefore, all the votes given to him must be deemed to have been wasted and thrown away and according to my interpretation of Section 101(a) of the Act the petitioner comes in as the person who in fact received a majority of the valid votes in this election.

I give below votes secured by the respondents No. 1 and 2 and the petitioner and respondent No. 4. The other candidates have got very few votes:—

Sri Karan Singh, respondent No. 1	..	.. 19,630 votes.
Sri Jagannath Prasad, respondent No. 2	..	.. 19,571 votes.
the Petitioner	..	.. 16,705 votes.
Sri Gulab Ram, respondent No. 4	..	.. 15,694 votes.

These figures will show that the petitioner got the largest number of valid votes if I discard votes secured by respondent No. 1. This is common sense and that is my interpretation of Section 101 of the Act. It has been argued by the learned counsel of the respondents that the word used in Section 101(a) is 'valid votes' and he argued that the votes given to respondent No. 1 were all valid votes and, therefore, in order to ascertain whether the petitioner got the majority of valid votes we have to take into consideration these 19,630 votes. I do not agree with this contention. The word 'valid votes' has not been defined in the Representation of the People Act or in the rules made thereunder. It is only at the time of counting of votes that the Returning Officer has under rule 47 to reject ballot papers on certain grounds. These rejected ballot papers have been described as invalid votes and the others as valid votes in forms Nos. 14 and 15 of the first schedule to the rule. The whole argument of the counsel is based on this description in the forms. I am unable to accept this argument. In my opinion when votes are cast for a person whose election is set aside on the ground of disqualification he goes out of the picture and the votes given to him should be considered to have been thrown away and need not be taken into consideration at all. To give any other meaning would be to enter into the region of speculation which the legislature never intended. I may mention that some English cases were cited before the Tribunal one of which is the case of Beresford-Hope, *petitioner*, Vs. Lady Sandhurst, 23 Q.E.D. (page 79 where it was held that votes given to the respondents were thrown away and the petitioner was duly elected. In coming to that conclusion reference was made to several other English cases. It seems to me that the trend of English rulings is to try to give value to the votes which were really thrown away as they were given to a candidate whose election was set aside on the ground of disqualification. There is no Section corresponding to Section 101 in the English Act viz. Representation of the People Act, 1949,

12 and 13 Geo. 6, Ch. 69 and the question has been decided in England on case law. It is in my opinion a useless and a vain attempt and I shall refrain from doing so and I would hold that all the votes given to respondent No. 1 were thrown away and should not be taken into consideration at all for the purposes of this election and the petitioner comes in as he has the next largest number of valid votes. I may add that respondent No. 1 stood for the general seat as did the petitioner.

In order that Sri Gulab Ram, respondent No. 4 may be elected it is necessary to determine that but for the votes obtained by the returned candidates, respondents No. 1 and 2 by corrupt practice the petitioner and respondent No. 4 would have obtained a majority of valid votes. Here I have to go into region of pure speculation which is not the province of a judge. It is impossible to find how many votes were obtained by respondent No. 1 and 2 by committing the corrupt practice and further that these votes should have gone to the petitioner and the respondent No. 4. I do not want to make this vain attempt. The result is that the petitioner has been duly elected as the member for the general seat in this constituency. I make no declaration regarding respondent No. 4.

I order, therefore, that the election of the respondents No. 1 and 2 be set aside and that the petitioner be declared duly elected for the general seat in this constituency. As the respondents No. 1 and 2 have committed the corrupt practices mentioned above it entails a disqualification as contemplated in Section 140 of the Representation of the People Act. I allow the petitioner and order that the respondents No. 1 and 2 should pay to the petitioner Rs. 1,000/- as costs.

(Sd) A. SANYAL, Advocate Member.

The 19th May, 1955.

#### ORDER BY THE TRIBUNAL

There is a difference of opinion among the Members of the Tribunal as to the final order to be made in this case. The Chairman and the Judicial Member are of the opinion that the petitioner has not been able to prove that the respondent No. 1 suffered from any disqualification under Section 7(d) of the Representation of the People Act, 1951, in seeking election to the State Assembly, nor has he succeeded in proving that any corrupt practices, whether major or minor, were committed by them or on their behalf in this election or that any irregularities materially affecting the result of the election were committed, and the consequence is that they are for dismissing the petition with costs to the respondents No. 1 and 2 which costs they assess at Rs. 500/-. On the other hand, the Advocate Member is of the opinion that the respondent No. 1 suffered from such a disqualification under Section 7(d) of the Act and also that the respondents No. 1 and 2 were guilty of the major corrupt practice defined in Section 123(8) and the minor corrupt practices defined in Sections 124(1), (4) and (5) of the Act and further the respondent No. 1 was guilty of the corrupt practice defined in Section 123(1) of the Act; he is, therefore, for allowing the petition and declaring the election of the respondents No. 1 and 2 to be void and also for declaring the petitioner to have been duly elected in place of the respondent No. 1; also he is of the opinion that the corrupt practices found against the respondents No. 1 and 2 entail a disqualification in respect of them under Section 140 of the Act; in his view the election petition must be allowed accordingly with Rs. 1,000/- as costs to the petitioner. Under Section 104 of the Representation of the People Act, 1951, the opinion of the majority is to prevail and, therefore, it is held that the petitioner has failed to prove that the respondent No. 1 suffered from a disqualification under Section 7(d) of the Act and he has also failed to prove the commission of any corrupt practices, whether major or minor, by or on behalf of the respondents No. 1 and 2. No irregularities either materially affecting the result of the election have been proved. Consequently, it is ordered that the election petition is dismissed with costs to the respondents No. 1 and 2 and these costs are assessed at Rs. 500/-.

(Sd.) R. SARAN, Chairman.

(Sd.) A. SANYAL, Advocate Member.

(Sd.) M. U. FARUQI, Judicial Member.

The 19th May, 1955.

ANNEXURE A  
BEFORE THE ELECTION TRIBUNAL AT FAIZABAD

PRESENT: |

Sri D. N. Roy—*Chairman.*

Sri A. Sanyal—*Member.*

Sri M. U. Faruqi—*Member*

ELECTION PETITION No. 319 OF 1952

Sri Khushwaqt Rai—*Petitioner.*

*Versus*

1. Sri Karan Singh,
2. Sri Jagannath Prasad,
3. Sri Banshi Dhar Misra,
4. Sri Gulab, .
5. Sri Raghunandan Prasad Indra,
6. Sri Shyam Lal,
7. Sri Devata Din,
8. Sri Surath Bahadur Shah,
9. Sri Jagdamba Prasad,
10. Sri Ram Dayal,
11. Sri Sharda Prasad,
12. Kallumal,
13. Sri Mata Prasad—*Respondents.*

| ORDER

This is an election petition filed by Sri Khushwaqt Rai one of the candidates for election to the Legislative Assembly of Uttar Pradesh, from the Nighasan-cum-Lakhimpur (North) Constituency for the general election of 1951-52 claiming that the election of Respondents Nos. 1 and 2 be declared void and claiming also that the petitioner and Respondent No. 4 be declared to have been duly elected

The Respondents were duly served, but only Respondents Nos. 1, 2, 3, 4 and 9 entered appearance and have filed their written statements. Various issues were settled in the case, of which preliminary issues Nos. 1, 2 and 8 have been heard. They are as follows:—

1. Is the petition liable to be rejected for non-compliance with the provisions of Section 83(2) of the Representation of People Act of 1951?
2. Are the allegations of corrupt and illegal practices vague and indefinite and should not be entertained for that reason?
3. Is the petition liable to be dismissed for non-joinder of Ram Dayal, son of Kandhai of Amethi, Tehsil Nighasan, District Lakhimpur, in view of the provisions of Section 82 of the Representation of the People Act?

We shall take up issue No. 1 first. Section 83 of the Representation of the People Act of 1951 lays down that an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. It further lays down that the petition shall be accompanied by a list signed and verified in like manner, setting forth full particulars of any corrupt or illegal practice, which the petitioner alleges, including as full statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. Sub-section (3) of that section lays down that the Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

In the present case, no separate list has been given along with the petition. The particulars of corrupt and illegal practices alleged to have been committed in the case are given in the petition itself and have been verified. The question, therefore, is whether the non-compliance with the provisions of Section 83(2) of the Act should, in the circumstances of the present case, be visited with a dismissal of the petition. The question has been considered in different ways by different Tribunals. In the Bombay case of *Sri Purushottamdas Ranchhoddas Patel Versus Shantilal Girdharlal Parikh and others* (published in the *Gazette of India Extraordinary*, Part I, Section 1, dated 10th October 1952) and in the Bombay case of *Sri Kanaiyalal Durilabhram Bhansali Versus Popatlal Mulshanker Joshi* (*Gazette of India Extraordinary*, Part I, Section 1, dated October 14, 1952) and in the Gorakhpur case of *Sri Debi Prasad Versus Sri Mohammad Naseer and others* (*U.P. Gazette Extraordinary*, dated 27th January 1953) and in another Gorakhpur case is *Sri Mukti Nath Rai Versus Sri Uma Shanker Misra and others* (*U.P. Gazette Extraordinary*, dated January 27, 1953), the Tribunals held upon the circumstances of those particular case that non-compliance with the provisions of Section 83(2) of the Act entailed a dismissal of the petition. In a Madras case in *Sri T. Prakasam Versus Dr. U. Krishna Rao and others* (*Gazette of India Extraordinary*, Part II, Section 3, dated January 5, 1953), the circumstances were very much similar as in the present case. There the particulars were not furnished in the form of a list to the original petition, but certain allegations had been made in the petition itself and the list which the petitioner subsequently sent contained only those allegations arranged in proper form and no new allegations had been made. The Tribunal observed that to dismiss the petition on the ground that these allegations did not appear in the form of a list, though they do find a place in the petition, would be a too narrow and technical view of Section 83(2), insisting on the form rather than the substance. The Tribunal further observed that they did not mean to say that a failure to comply with the requirements of Section 83(2) which is wilful and deliberate should be excused; and that in the peculiar circumstances of that particular case, the petitioner seemed to have been under the *bona fide* belief that a separate list was not necessary. Following the reasoning of that decision, we would hold that the petition in the present case is not liable to be dismissed on that ground.

We would now come to deal with issue No. 8. It covers the question whether the petition is liable to be dismissed for the non-joinder of Ram Dayal, son of Kandhai of Amethi, Tehsil Nighasan, District Lakhimpur, in view of the provisions of Section 82 of the Representation of the People Act. Section 82 lays down that a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. In the petition, we would find Respondent No. 10 described as "Sri Ram Dayal (father's name not known), resident of Ghunsi, Tehsil Lakhimpur, District Kheri". In paragraph 6 of the petition, it was stated that Respondent No. 10 was duly nominated as a candidate at the said election, but he withdrew his name. It is admitted by the parties that Ram Dayal, resident of Ghunsi, Tehsil Lakhimpur, District Kheri was a duly nominated candidate for election to the U.P. Legislative Assembly from Lakhimpur (South) Constituency, and not for the Highasan-cum-Lakhimpur (North) Constituency; that that Ram Dayal had also withdrawn from election from Lakhimpur (South) Constituency, and that Ram Dayal who was a duly nominated candidate for the Constituency which is involved in the present case was resident of Amethi, Tehsil Nighasan, District Kheri, who had also withdrawn later on from the election. It is therefore obvious that Sri Ram Dayal who was described as Respondent No. 10 in the petition and who was referred to in paragraph 6 of the petition was the Ram Dayal, who was duly nominated for the present Constituency and who had withdrawn his candidature as such, and he is a resident of Amethi, Tehsil Nighasan, District Kheri. What appears to have happened is this that although the real Ram Dayal, who is to be arrayed as a party in the present case was described in the petition and was made a party, his address was by some mistake given wrongly in the petition. Notice was sent to the real Ram Dayal, resident of Amethi, Tehsil Nighasan, District Kheri. He has not come forward to contest the petition in spite of service of notice. The clerical or accidental error in the petition in regard to this matter would not entail a dismissal of the petition in view of the provisions of Section 82 of the Act. A mistake of this nature can be rectified and, as has been prayed for by the petitioner, we direct that the address of Respondent No. 10 be corrected by specifying that he is a resident of Amethi, Tehsil Nighasan, District Kheri.

This brings us to issue No. 2 formulated above. It covers the question whether the allegations of corrupt or illegal practices are vague and indefinite and should not be entertained for that reason. We have carefully examined the petition and we are of the opinion that the following paragraphs of the petition relating to



the alleged corrupt and illegal practices are vague and indefinite, and they should not, therefore, be entertained for that reason:—

Para. 7(ii) (a), (b), (d), (e), (f); para. 7(iv) (f); (g), (k), (l), (m), (n); para. 7(v); para. 7(vi); para. 7(vii); para. 7(x); para. 7(xi); para. 7(xiii); para. 7(xiv); para. 7(xvi); para. 7(xvii) (a); para. 7(xvii) (f); para. 7(xvii) (g); para. 7(xvii) (h); para. 7(xvii) (i); para. 7(xvii) (j); para. 7(xvii) (k); para. 7(xvii) (l); para. 8(j); para. 8(n); para. 8(o); para. 8(p); para. 8(r); para. 8(u) and para. 10.

The following words in the undernoted paragraphs are also vague and indefinite and should be deleted:—

- (1) From para. 7(ii) delete the words "and through their agents and workers."
- (2) From para. 7(iii) delete the words "and through their workers and agents".
- (3) From para. 7(iii) (e) delete the words "and he influenced a number of District Board employees to work in the furtherance of the election of Respondents Nos. 1 and 2".
- (4) From para. 7(iv) delete the words "or through their workers and agents with their connivance".
- (5) From para. 7(xvii) (b) delete the words "Some of the electors at this polling station also went back without casting their votes as he had come to know that wrong ballot papers were being issued".

In regard to the averment made in para. 7(iii) (b), the petitioner will be confined in evidence merely to the particular instance of polling station Bijwa relating to the Presiding Officer, Sri R. K. Misra, Sub-Deputy Inspector of Schools and not to any other instance.

(Sd.) D. N. ROY, *Chairman.*

(Sd.) A. SANYAL, *Advocate Member.*

(Sd.) M. U. FARUQI, *Judicial Member.*

The 21st March, 1953.

#### ANNEXURE B

ELECTION PETITION No. 319 of 1952

Sri Khushwaqt Rai—*Petitioner.*

*Versus*

Sri Karan Singh and others—*Respondents.*

#### ORDER

This is an application by the petitioner purporting to under Section 83(3) of the Representation of the People Act, 1951 and Order VI, rule 17 of the C.P.C., praying that he may be allowed to give further particulars of the corrupt practice alleged in paragraph 7(iii) of the petition by the addition of another paragraph to be embodied in it as paragraph 7(iii) (i) for the purpose of ensuring a fair and effectual trial of the petition. The amendment prayed for reads as follows: "that the respondent No. 1 procured the assistance for furtherance of the prospects of his election of the following village headmen by appointing them as polling agents at the polling stations specified before their respective names". Then follow the names of the three village headmen and the polling stations at which they were appointed as polling agents. Among the documents filed the petitioner has produced certified copies of the list of village mukhias (village headmen) and of the forms of appointment of polling agents.

The petition as drafted by the counsel for the petitioner is not according to the form prescribed by Section 83 of the Representation of the People Act, 1951. The said section provides that the contents of petition should be divided into two parts, (1) the concise statement and (2) the particulars in the form of a list. The two together make up the petition. If this petition had been properly drafted the first portion namely the concise statement would have read as follows:—

"that the respondents 1 and 2 themselves and through their workers and agents obtained the assistance of a number of Government servants for the furtherance of the prospects of their election."

The second portion namely the list of particulars would have been the instances given in the sub-para. (a) to (h) of the said paragraph but they have been put together in the same paragraph No. 7(iii) of the petition. It is true that the petition is not drafted according to the correct form and the petitioner should have separated the concise statement portion from the list of instances (a) to (h), but their incorporation in the same paragraph will not change the nature of the petition, and paragraph 7(iii) (a) to (h) contains really the particulars of various instances of the corrupt practice mentioned in paragraph 7(iii), namely obtaining assistance of Government servants. The application for amendment in substance is really an application for amendment of the list of particulars by adding one more instance, namely that assistance of village headmen was obtained by the respondent No. 1 for furtherance of the prospects of his election. In our opinion in this particular case it is not an application for amendment of the petition, namely part (1) concise statement but is really an application for amendment of the particulars as contemplated in part (2) of Section 83. We will not, therefore, go into the larger question whether the petition itself can be amended under Order VI, rule 17, C.P.C. We have already expressed our opinion in another case that the C.P.C. applies in its full force in an election petition unless some provisions of the C.P.C. are specifically and not by implication excluded by the Representation of the People Act, 1951. The argument of the learned counsel for the respondents in opposing the amendment application is that while the Tribunal has power to amend the list under Section 83(3) of the Act, it cannot amend the petition, and as in this particular case the particulars are embodied in the petition itself, it is an amendment of the petition and, therefore, cannot be allowed. Section 83 does not specifically say that the petition cannot be amended although it says that the particulars may be amended. This argument is based on an inference drawn from the provision of amendment as embodied in Section 83(3) of the Act and it is argued that since a provision has been made for the amendment of particulars, by inference any amendment of petition is prohibited. There is a fallacy in this reasoning. Section 83(3) of the Act does not say that particulars *only* can be amended, or that the petition cannot be amended. As we have stated above the present application really seeks to amend the particulars of the substantial charge of obtaining assistance from Government servants by adding one more instance, namely obtaining assistance from village headmen. It, therefore, comes within the specific provision of Section 83(3) of the Act and we are of the opinion that this amendment should be allowed. However, even if the amendment prayed for be taken to be an amendment of the petition itself we would allow it under the provisions of Order VI, rule 17, C.P.C. as we have done in a similar case in this Tribunal, viz. Election Petition No. 320 of 1952, *Sri Tirloki Singh Versus Sri Harish Chandra Bajpai and others*.

This application was filed on 4th December, 1953 supported by an affidavit. There is no doubt that there has been delay in filing this application. It is explained by the fact that the petitioner came to know of village headmen acting in furtherance of the election of the respondent No. 1, only when respondent No. 9 filed his written statement on 24th January, 1953, thereafter he made enquiries and obtained certified copies of the necessary papers and filed them on 14th March, 1953 and 31st March, 1953. The affidavit says that on account of the law as interpreted by Tribunal he was not advised to file this application, and when the majority judgment of this Tribunal decided on a similar question on 28th November, 1953 and allowed an amendment under Section 83(3) of the Act read with Order VI, rule 17, C.P.C. in the Election Petition No. 320 of 1952 he filed this application. The petitioner's evidence is still going on and in this particular case practically no evidence is necessary except some formal witnesses to prove the documents already on the record. We would, therefore, condone the delay and grant the application for amendment as prayed for.

(Sd.) R. SARAN, *Chairman*.

(Sd.) A. SANYAL, *Advocate Member*.

*The 13th January, 1954.*

#### ORDER

I had the advantage of pursuing the order proposed by my learned colleagues. I regret I do not find myself in agreement either with their views expressed in the said order or with the consequent decision.

The only question for decision was as to whether any substantial new charge, after expiry of the period of limitation, could be added in an election petition.

This very point had cropped up in another election case (Tirloki Singh *Versus* Sri Harish Chandra Bajpai—Election Petition No. 320 of 1952) in which in my dissenting order of November 28, 1953 I have expressed my view in some details. I adhere to that view.

This amendment application is made admittedly only on the strength of the majority decision of the case referred to above. Naturally the amendment application did not make much of an attempt at explaining the inordinate delay after which the same was presented. It does not further explain as to why the allegation was not made in the petition when it was filed before the Election Commission.

The main reason for the view that the amendment sought should and could not be allowed is that a substantial new charge cannot be added in the petition proper. As every new instance of a corrupt or illegal practice is a substantial new charge, my view is that the same cannot be added by invoking the provisions of sub-section (3) of Section 83 of the Representation of the People Act, 1951 which provides for amendment of particulars of the list and not of the list itself.

Therefore, for the reasons given above and also for the reasons given by me in my order of Tirloki Singh's case referred to above I hold that amendment of the petition proper cannot be made and being of this view I would dismiss the amendment application dated December 4, 1953 made by the petitioner.

(Sd.) M. U. FARUQI, *Judicial Member.*

*The 13th January, 1954.*

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#### ORDER BY THE TRIBUNAL

There is a difference of opinion among the Members of the Tribunal on the question as to whether the Petitioner's application dated 4th December, 1953 for addition by way of amendment in paragraph 7(iii) of the petition should or should not be allowed. Sri A. Sanyal, the Advocate Member, and Sri R. Saran, the Chairman, are for allowing the amendment whereas Sri M. U. Faruqi, the Judicial Member, is against it. In these circumstances opinion of the majority is to prevail under the provisions of Section 104 of the Representation of the People Act, 1951.

It is, therefore, ordered that paragraph 7(iii) of the petition shall be amended as prayed for. The contesting Respondents may file any additional written statement if they so desire by 23rd January, 1954, on which date additional issues shall be struck, if necessary.

(Sd.) R. SARAN, *Chairman.*

(Sd.) M. U. FARUQI, *Judicial Member.*

(Sd.) A. SANYAL, *Advocate Member.*

*The 13th January, 1954.*

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[No. 19/319/52-Elec.III/7321.]

By Order,

K. S. RAJAGOPALAN, *Asstt. Secy*

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